

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
ST. ANNE'S EPISCOPAL COMMUNITY
DEVELOPMENT CORPORATION

Applicant

Reverend Lee Davis
Kenneth Jones
Christopher Everett
John Kershner
Nicole White

For the Application

Jody S. Kline, Esquire

Attorney for the Applicant

Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

OZAH Case No. CU 18-11

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE AND DESCRIPTION OF PROCEEDINGS

On June 14 2018, St. Anne's Episcopal Community Development Corporation (hereinafter, “the Applicant” or “St. Anne’s”) filed an application for a conditional use under Zoning Ordinance §59.3.3.2.C.2.c., to establish an Independent Living Facility with 76 dwelling units for Seniors or Persons with Disabilities. The subject site consists of a 3.44 acre property, to be subdivided into Lot 2 from a 10.24 acre parcel of land owned by the “Rector, Wardens and Vestryman of St. Anne’s Episcopal Church.” The property owner has authorized this application. Exhibit 36. The site is identified as Parcel A, Chesney Subdivision, and it is located at 25100 Ridge Road (Route 27) in Damascus, just over one mile south of downtown Damascus. It is in the R-200 Zone and is subject to the *Damascus Master Plan*. The property has the Tax ID No. 12-00926447.

The conditional use application was originally accompanied by an application for a variance (Board of Appeals No. A-6569), but that was withdrawn on October 30, 2018 (Exhibit 40), when revisions to the plans suggested by Technical Staff of the Montgomery County Planning Department (Technical Staff or Staff) eliminated a retaining wall over 6.5 feet in height and thereby eliminated the need for a variance.

On November 2, 2018, Technical Staff issued a report, recommending approval of the application, subject to 14 proposed conditions. Exhibit 45. At the request of the Hearing Examiner (Exhibit 46), Staff supplemented its report on November 20, 2018 (Exhibit 47(a)).

Proposed amendments to some of the plans and supporting documents, including a Joint Parking Agreement with the abutting Church and a requested waiver of parking space and setback requirements, were filed with the Office of Zoning and Administrative Hearings (OZAH) by the Applicant on November 5, 2018 (Exhibits 41(a) – (i) and 42), and OZAH issued a notice of the motion to amend and waiver requests on November 6, 2018, giving parties until November 16, 2018 to object to the motion (Exhibit 43). No letters opposing the amendments

were received, and the amendments to the application were therefore automatically granted.

By the Notice issued on November 6, 2018, the OZAH also announced a public hearing to be held on December 7, 2018. Exhibit 43.

The Montgomery County Planning Board met on November 15, 2018, and unanimously recommended approval of the application, but with modifications to proposed conditions 11 and 12. The Board adopted the conditions recommended by Staff, as modified, concluding that “The project is consistent with the Damascus Master Plan and satisfies the requirements of the zoning ordinance for the approval of a conditional use for a senior independent living facility in the R-200 zone.” *Planning Board letter of November 26, 2018 (Exhibit 49).*

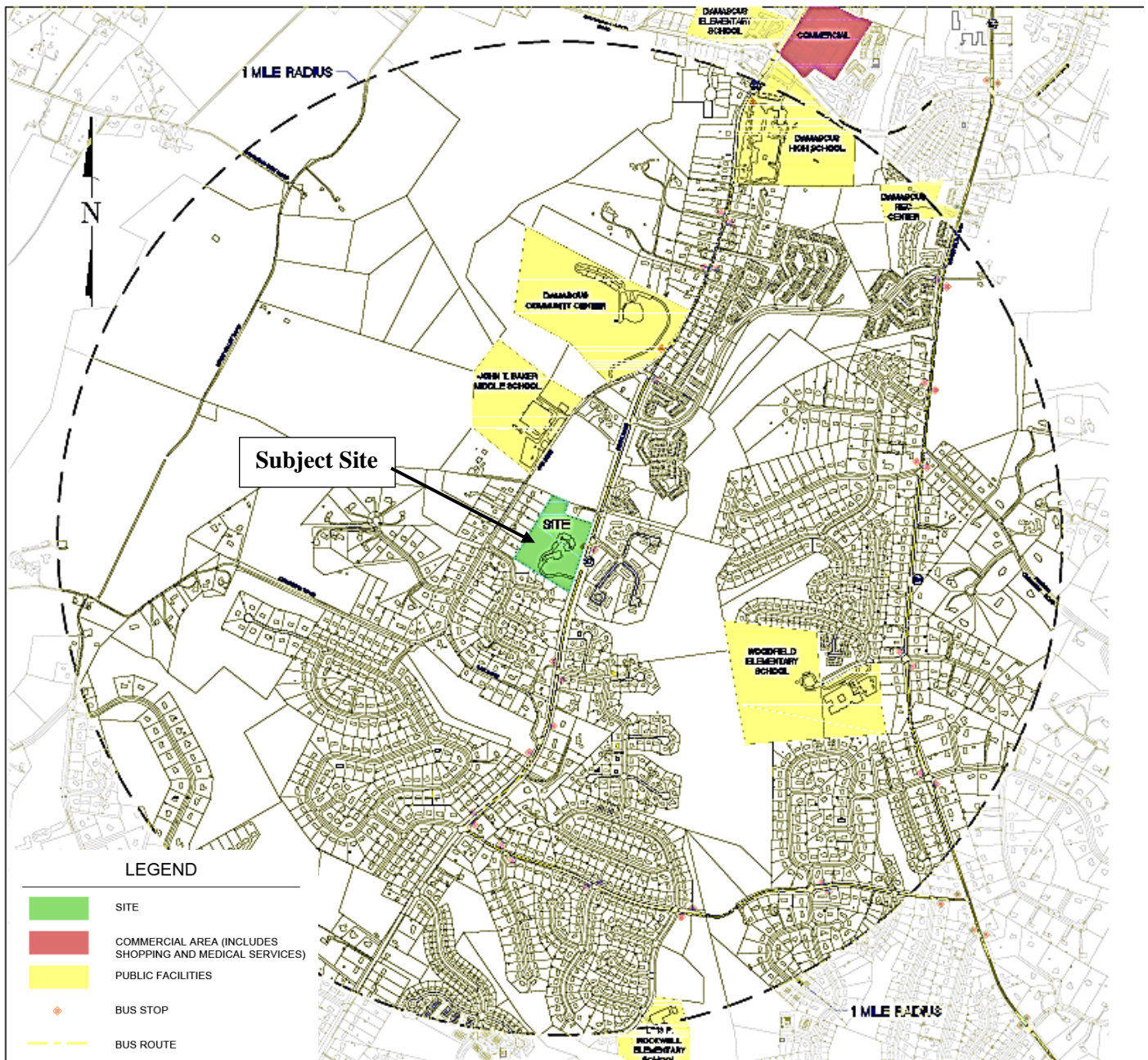
The December 7, 2018, public hearing proceeded as scheduled. The Applicant called five witnesses, and there was no other testimony. At the hearing, the Applicant introduced two rendered views of the proposed building (Exhibits 55(a) and (b)), thereafter filing electronic copies. The record was kept open till December 24, 2018 to give the Applicant the opportunity to also file a vicinity map in accordance with Zoning Ordinance §59. 3.3.2.C.2.c.i , and to allow Technical Staff time to comment. The map was filed on December 14, 2018 (Exhibit 59(a)), and Technical Staff commented that it was “accurate and acceptable” (Exhibit 60). The record closed, as scheduled, on December 24, 2018.

Based on the entire record, the Hearing Examiner finds that the proposed use, as set forth in the Conditional Use Site Plan and related Plans (Exhibits 15-20, 24, 25, 29, 30 and 41(a) – (i)), will meet all the criteria specified in the Zoning Ordinance. More specifically, it will be compatible with the neighborhood; it will be consistent with the goals of the applicable Master Plan; it will not have undue adverse effects on the neighbors; it will comply with development standards; and it will not harm the environment. Therefore, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject site consists of 3.44 acres of land (after subdivision of the existing 10.24 acre property) in the R-200 Zone. The site is identified as Parcel A, Chesney Subdivision, and it is located at 25100 Ridge Road (Route 27) in Damascus, just over one mile south of downtown Damascus, as can be seen on the Vicinity Map (Exhibit 59(a)) provided by the Applicant:



The site is well described by Technical Staff (Exhibit 45, pp. 4-5),

The Property is situated on the west side of Ridge Road (MD 27), about 1.5 miles south of Main Street in Damascus. Access to the Property is from Ridge Road. The 10.24-acre Property has a varied and hilly topography. There are relatively steep slopes with mature trees cover that extend from an elevation of about 700 ft. at Ridge Road to about 720 ft. to a flatter area of the Property where the church building and parking lot is located. The parcel is irregularly shaped with 778 ft. of frontage along Ridge Road.

The Property is developed with an approximately 15,500 sq. ft. church building and a separate two-story frame dwelling used for church-related services. The church building is set back approximately 200 ft. from the front property line. The dwelling is setback approximately 250 ft. from the front property line. There is a 25 ft. wide driveway with access from Ridge Road that serves a parking lot for 73 cars, and also provides access to the dwelling.

Landscaping is present on the remainder of the Property. The landscaping consists of an ornamental lawn, meadowed areas, and a variety of trees, shrubs, evergreens and some invasive species. A dense line of mature evergreen trees is located along the Property's highest elevation, near the western property line.

There are 2.75 acres of existing forest cover as shown on the existing forest conservation plan (SC2002011). The forested areas are in the northwestern section of the Property, along the north property line; and the southeastern corner, which contains an ephemeral stream channel. The slope along Ridge Road consists of mainly forest cover, with some shrubs and evergreens. Another ephemeral channel is located near the northeastern property corner near Ridge Road.

There are no wetlands or known rare or endangered species present. There are no historically significant structures or sites located on or near the Property.

It is shown below in an aerial photo provided by Technical Staff (Exhibit 45, p. 4):

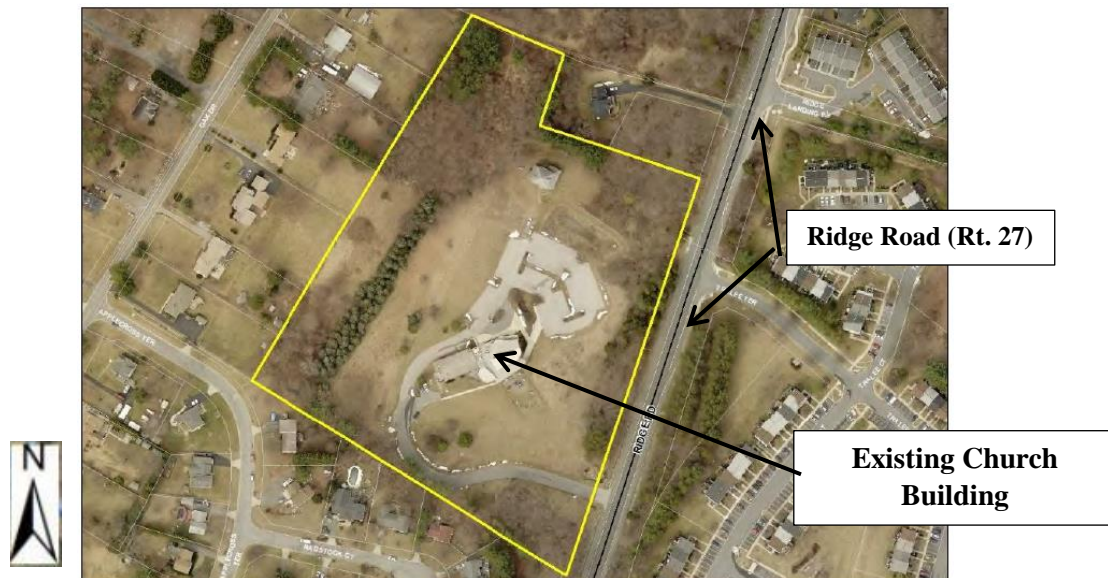


Figure 1 – Aerial view of the subject Property

Staff also attached photographs of the site to its Report (Attachment 3), some of which are reproduced below:



Photo No. 7 View of parking lot and church from west slope of property



Photo No. 4 View of church from driveway



Photo No. 5 View of property interior and house from northeast corner of property



Photo No. 6 View of property interior and parking lot from west slope of property



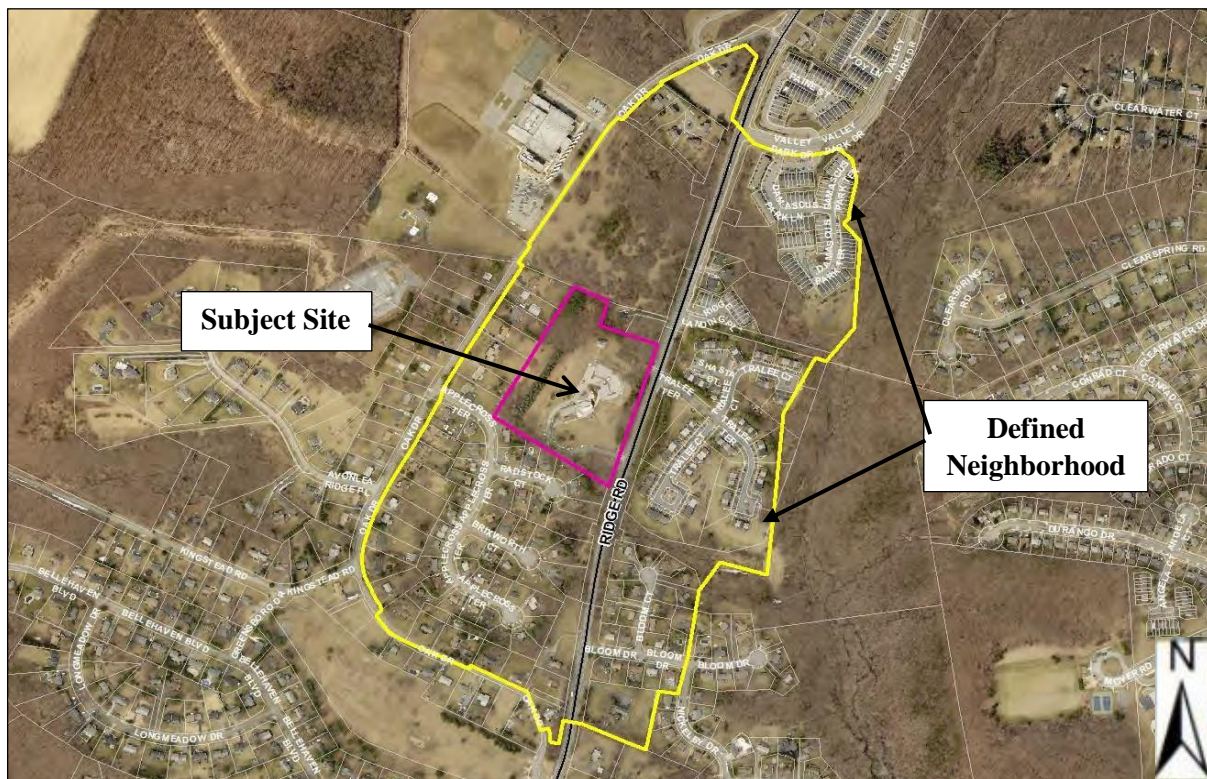
Photo No. 2 North view of Ridge Road from driveway



Photo No. 8 View from driveway near church towards exit and Ridge Road

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Technical Staff has defined the surrounding neighborhood to include all abutting and confronting properties. Specifically, “. . . The neighborhood boundary begins at the intersection of Oak Drive and Ridge Road, follows south along Oak Drive to the intersection of Ridge Road at Joh Haines Park, north on Ridge Road to Bloom Drive, west on Bloom Drive, then roughly north along the western boundary of Upper Magruder Branch Park to Valley Park Drive, then west to the intersection with Ridge Road and north to Oak Drive.” Exhibit 45, pp. 6-7. It is virtually identical with the definition proposed by the Applicant (Exhibit 8, p. 6).

The Hearing Examiner accepts Staff’s proposed definition of the neighborhood, as it includes the area and uses most likely to be affected by the proposed facility. Technical Staff also provided an aerial photo showing the defined neighborhood, and a chart and map showing the zoning and uses within the neighborhood (Exhibit 45. pp. 6-8), all of which are reproduced below:



The existing zoning and land uses, as provided in Staff's Table and Zoning Map, below:

Table 1 - Neighborhood Description

Existing Zoning	
Subject:	R-200 (Residential 200)
North:	R-200, R-90
South:	R-200
East:	RT-12.5 (Residential-Townhouse)
West:	R-200
Existing Land Use	
Subject:	Church and daycare
North:	Detached dwellings, vacant land
South:	Detached dwellings, veterinary clinic
East:	Townhomes
West:	Detached dwelling

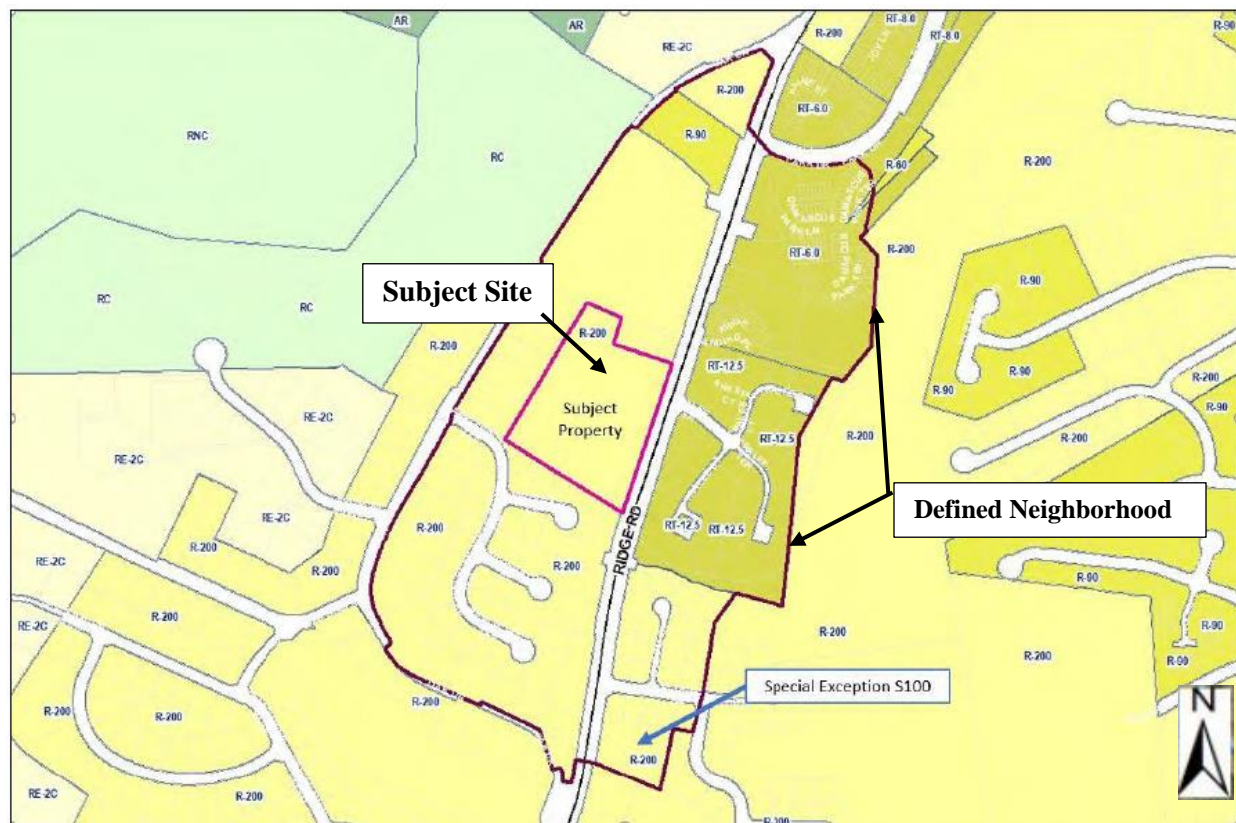


Figure 4 – Zoning map and conditional uses located within the defined neighborhood.

According to Staff, the neighborhood consists primarily of suburban residential homes and vacant school district property. There is one conditional use/special exception (S-100) located within the defined neighborhood at 24939 Ridge Road, south of the subject site. It was approved in 1972 for a veterinary hospital, and it has been in continuous operation since then. To the north, west and south are detached dwellings and vacant land, and to the east are townhouse developments.

C. Proposed Use

The Applicant seeks a conditional use, pursuant to Section 59.3.3.2.C.2.c. of the Zoning Ordinance, to construct and operate an Independent Living Facility for Seniors or Persons with Disabilities, consisting of 76 independent living units on a 3.44 acre site (Lot 2). The proposal is described by the Technical Staff (Exhibit 45, pp. 8-9),

The Project consists of the construction and operation of an independent senior living facility in a new 73,000 sq. ft., four-story, 76-unit apartment building . . . The portion of the Property subject to the conditional use review consist[s] of 3.44 acres of the 10.24-acre Property and is delineated as Lot 2. . . .

The facility will include a resident community room, sitting room, library, wellness suite, fitness room, cybercafé, and on-site property management.

* * *

Vehicular ingress and egress are from Ridge Road via a 25 ft. wide driveway. The parking lot is set back approximately 51 ft. from the front property line and is obscured by the forested slope on Ridge Road. Thirty-four (34) surface car parking spaces, 20 bicycle parking spaces, and three accessible spaces (including one van accessible space) are provided. The proposed parking lot, which is situated between the church and the apartment building, contains a total of 114 spaces and will be used by both the church and the conditional use through a joint shared use agreement (Attachment No. 4 [to the Staff Report]).

* * *

Retaining walls within the Property interior will be built to support parking lots and drive aisle access. . . . Due to the interior location of the retaining walls and the site topography, walls are not visible from off-site views or are adequately obscured by landscaping and mature trees. Retaining walls may be partially visible from Ridge Road from the driveway entrance, but due to the distance setback from the roadway, the impact on the viewshed from Ridge Road is not significant.

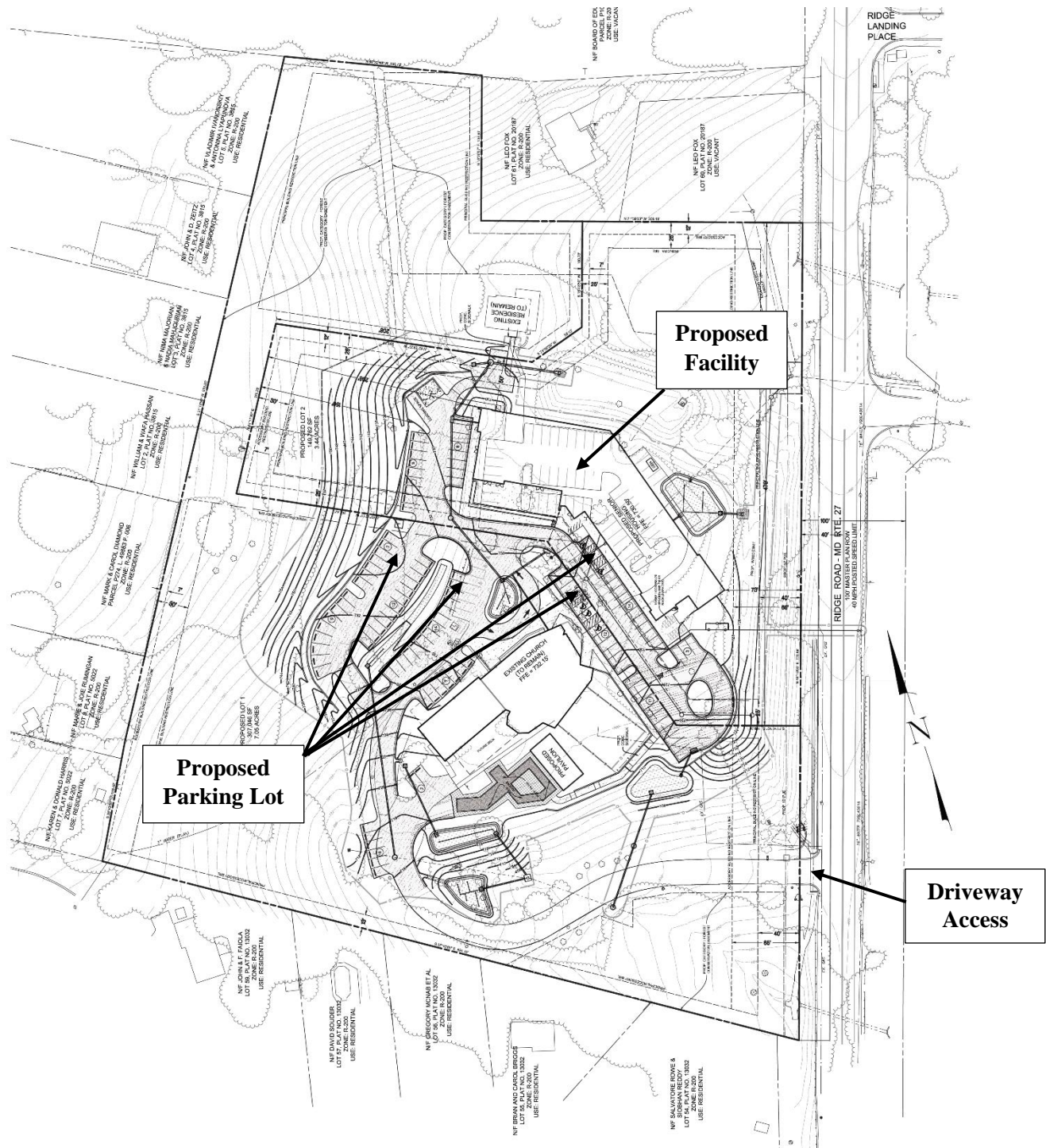
The house is situated between north side property line and the proposed apartment building. The house is set back approximately 250 ft. from the front property line and approximately 112 ft. from the north side property line.

Preliminary Plan

As part of a separate application, the Applicant indicates that a Preliminary Plan No. 120180230 for a two-lot subdivision has been submitted. This subdivision will create a 7.05-acre lot for the church and house (Lot 1), and a 3.44-acre lot for the apartment building (Lot 2).

1. Site Plan, Elevations and Floor Plans

The design of the facility is demonstrated by the Revised Conditional Use Site Plan (Exhibits 41(a) and (b)), followed by Elevations (Exhibits 15-18) and Floor Plans (Exhibit 19):



STANDARD METHOD DEVELOPMENT STANDARDS: R-200 ZONE

59-4.4.7

PROPOSED LOT 2
SENIOR HOUSING FACILITY

	<u>PERMITTED/REQUIRED</u>	<u>PROVIDED PER THIS PLAN</u>
MINIMUM NET LOT AREA:	20,000 SF	149,762 SF (3.44 ACRES)
MIN. LOT WIDTH AT FRONT BUILDING LINE:	100 FT	479 FT
MIN. LOT WIDTH AT FRONT LOT LINE:	25 FT	479 FT
MAXIMUM DENSITY:	AS DETERMINED BY THE HEARING EXAMINER ¹	
MAXIMUM COVERAGE:	25%	13%
PRINCIPAL BUILDING MIN. FRONT SETBACK:	50 FT ²	73 FT
PRINCIPAL BUILDING MIN. SIDE SETBACK:	25 FT ³	32 FT
PRINCIPAL BUILDING MIN. SUM OF SIDE SETBACKS:	50 FT ⁴	82 FT
PRINCIPAL BUILDING MIN. REAR SETBACK:	30 FT	208 FT
ACCESSORY STRUCTURE MIN. FRONT SETBACK:	65 FT	N/A
ACCESSORY STRUCTURE MIN. SIDE SETBACK:	12 FT	N/A
ACCESSORY STRUCTURE MIN. REAR SETBACK:	7 FT	N/A
PRINCIPAL BUILDING HEIGHT:	80 FT ¹	45 FT ⁶
MIN. GREEN AREA:	60% ⁷	75%
MIN. REAR PARKING SETBACK:	30 FT ⁸	150 FT
MIN. SIDE PARKING SETBACK:	24 FT ⁹	0 FT ⁵
VEHICLE PARKING REQUIRED:		
1.0 PER DWELLING UNIT:	76 (76 DWELLING UNITS)	
0.5 PER EMPLOYEE:	2 (4 EMPLOYEES)	
TOTAL:	39 SPACES ¹⁰	34 SPACES ¹¹
ACCESSIBLE SPACES:	2 SPACES	3 SPACES
BICYCLE PARKING REQUIRED:		
0.25 PER DWELLING UNIT:	19 (76 DWELLING UNITS)	
LONG TERM SPACES:	18 SPACES	20 SPACES ¹²
SHORT TERM SPACES:	1 SPACE	2 SPACES

¹PER 59-3.3.2.C.2.c.iv, MAXIMUM BUILDING HEIGHT OF AN INDEPENDENT LIVING FACILITY FOR SENIORS OR PERSONS WITH DISABILITIES IS 80 FT AND THE MAXIMUM DENSITY IS DETERMINED BY THE HEARING EXAMINER.

²PER 59-3.3.2.C.2.c.vi, MINIMUM FRONT SETBACK IS 50 FT.

³PER 59-3.3.2.C.2.c.vii, MINIMUM SIDE SETBACK IS 25 FT.

⁴PER 59-3.3.2.C.2.c.vii, EFFECTIVE MINIMUM SUM OF SIDE SETBACKS IS 50 FT.

⁵PARKING WAIVER REQUEST PENDING

⁶BASED ON INFORMATION PROVIDED BY ARCHITECT AND MEASURED FROM AVERAGE GRADE = 727.00'

⁷PER 59-3.3.2.C.2.c.viii, MINIMUM GREEN AREA IS 60% IN THE R-200 ZONE.

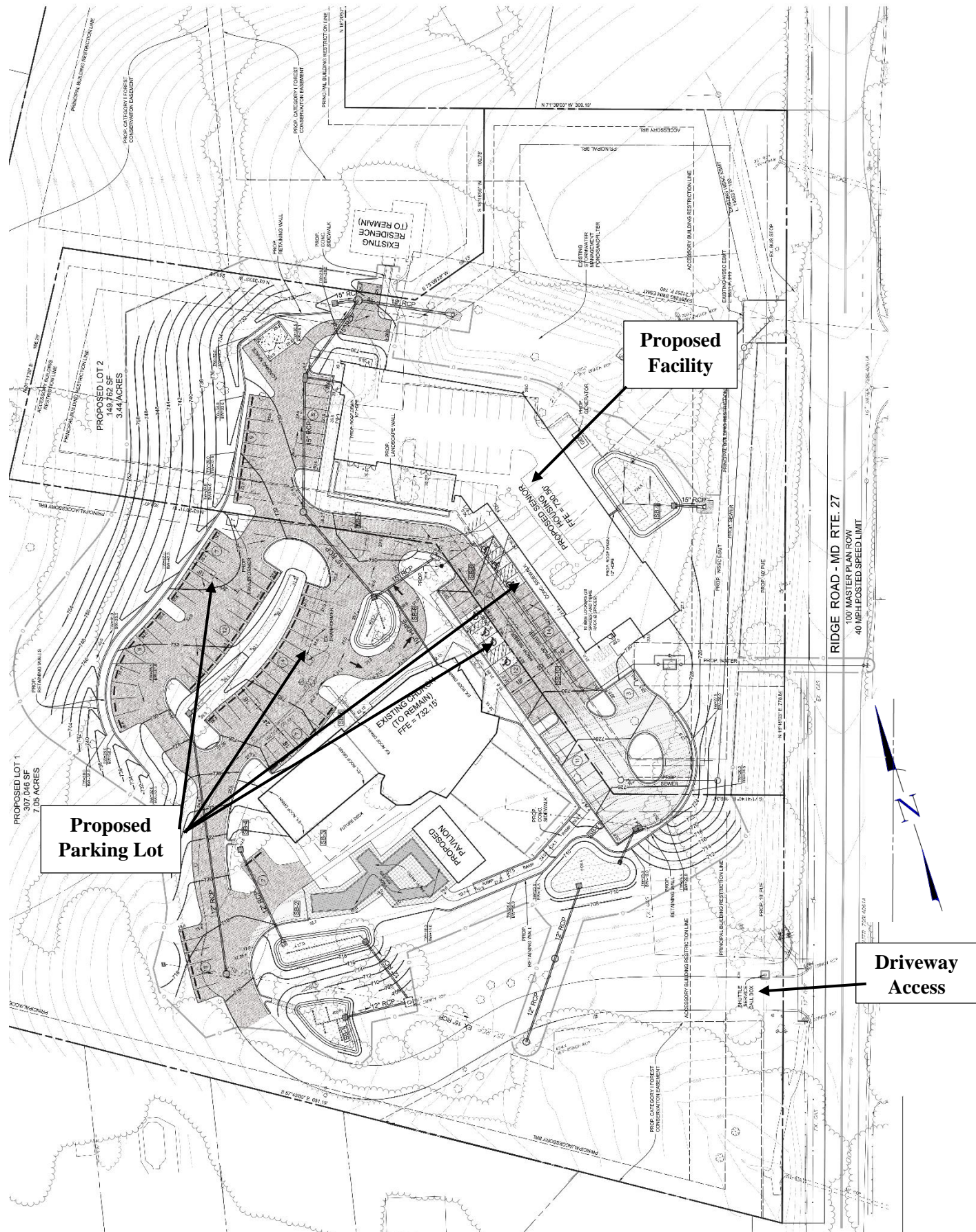
⁸PER 59-8.2.5.K.2.a, MINIMUM REAR PARKING SETBACK EQUALS THE MINIMUM REAR SETBACK REQUIRED FOR THE DETACHED HOUSE

⁹PER 59-8.2.5.K.2.b, MINIMUM SIDE PARKING SETBACK EQUALS 2 TIMES THE MINIMUM SIDE SETBACK REQUIRED FOR THE DETACHED HOUSE

¹⁰0.5 ADJUSTMENT FACTOR APPLIED TO SENIOR HOUSING PER 59-8.2.3.1.2.b

¹¹ADDITIONAL REQUIRED SPACES PROVIDED ON LOT 1

¹²20 LONG TERM SPACES PROVIDED BY 10 BIKE LOCKERS

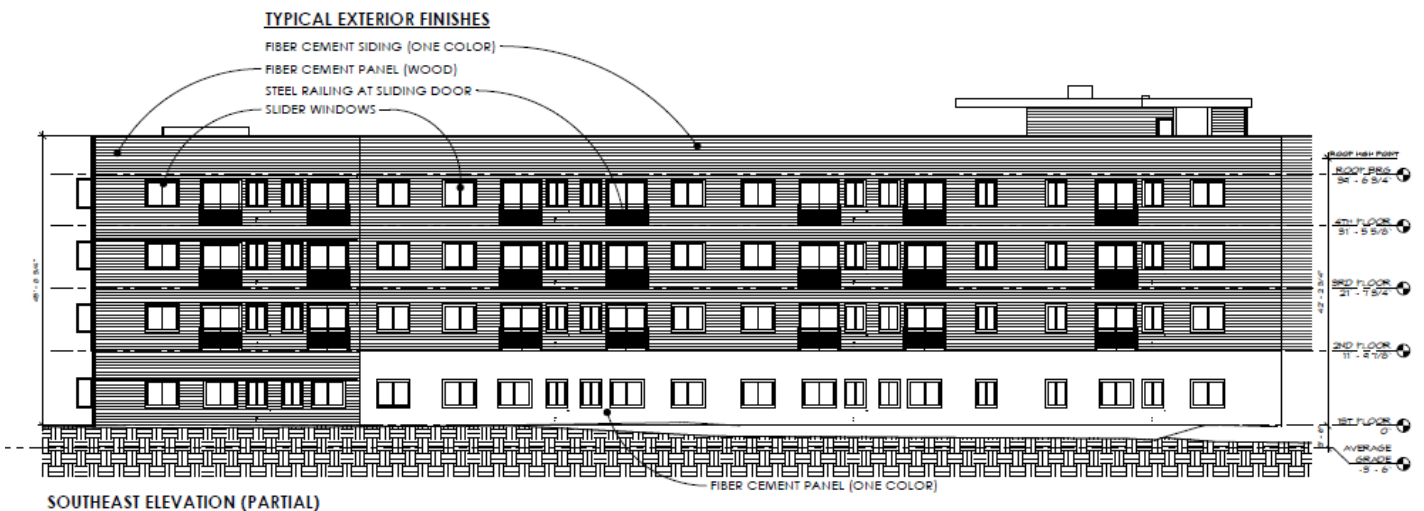
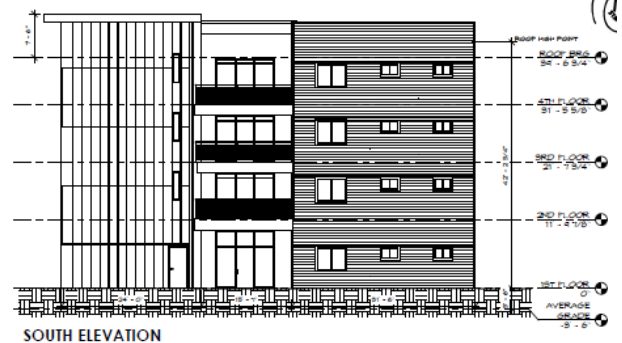
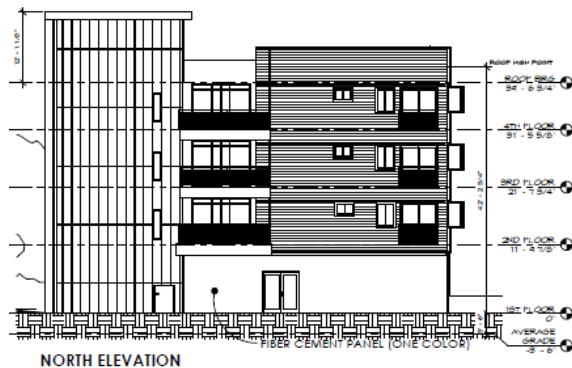
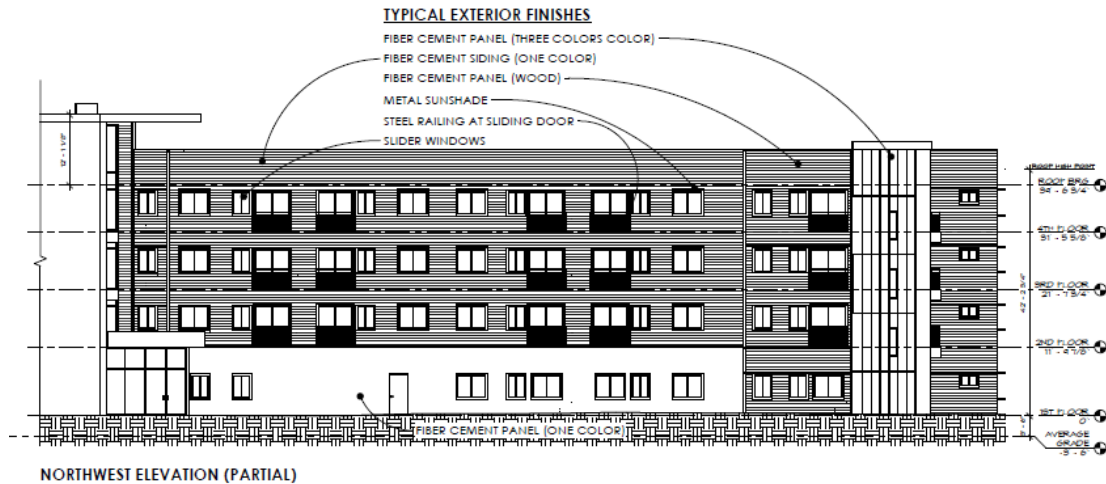


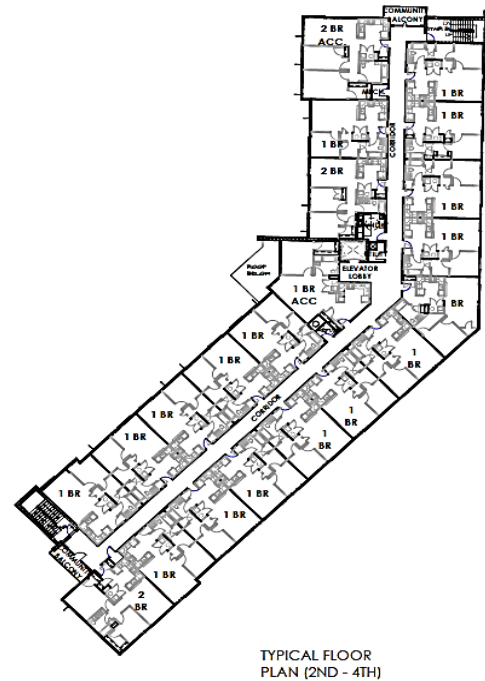
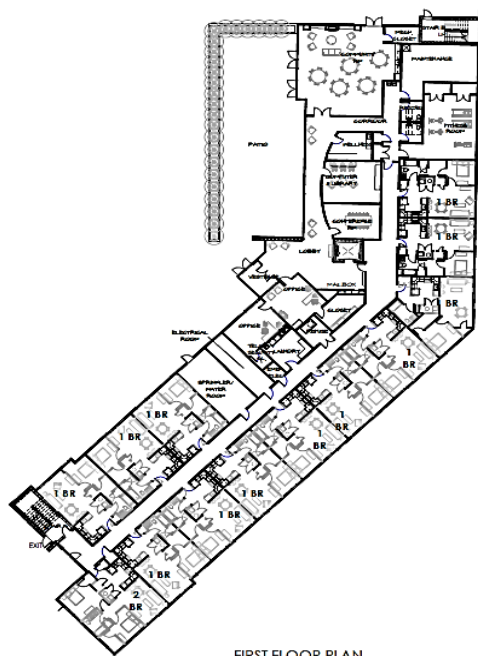
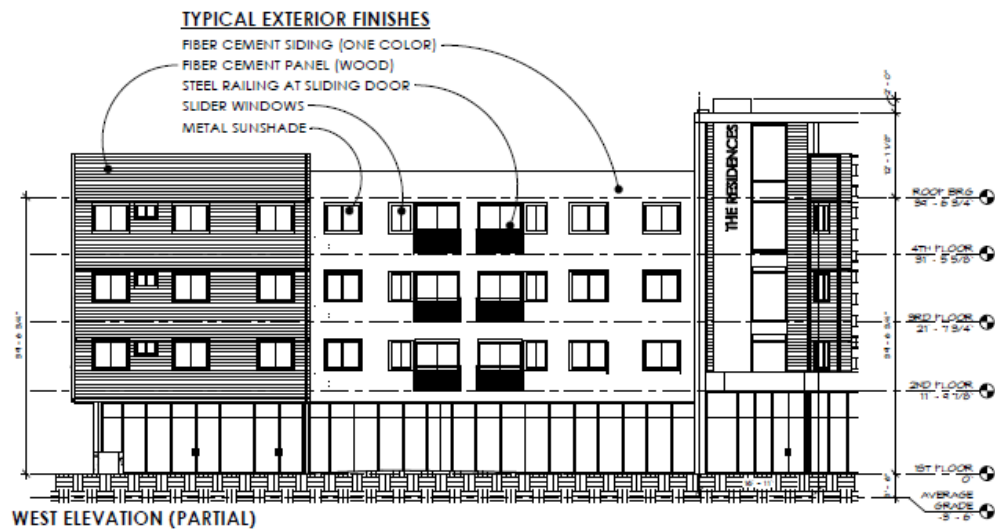
The Applicant's proposed Elevations (Exhibits 15-18) and Floor Plans (Exhibit 19) are reproduced below:

ELEVATIONS

ST. ANNE'S SENIOR APARTMENTS

25100 RIDGE RD, DAMASCUS, MD 20872





Applicant's architect, John Kershner, testified at the hearing regarding his design of the proposed building (Tr. 88-109), and he brought images of what it will look like (Exhibits 55(a) and (b)), which are reproduced below:



According to Mr. Kershner (Tr. 93),

... [The] topography of the site determined many of the positioning decisions ... We decided to take it to the lower, flatter section east of the church, where the current parking lot is located. And that would have the least impact on neighbors. The other thing that we took into consideration was the connection to the existing church, and the impact that it would have between church parishioners and residents of the new building. We felt like that would create the best length between the two.

Mr. Kershner designed a “podium” style building, with parking underneath, but instead:

... opted to provide residential units instead of the [underground] parking, and make the footprint of the building smaller. ... [The] main elements are the vertical stair towers, and the elevator tower at the, kind of centralized core of the building. The elbow of the building. All public activities initiate at the main entry to the

building and are located on the first level. . . . So all of the common activities take place off of the central core and then spread out to the north end of the building. We have a small patio outside of the main entry to the building that will be used by residents, as well as a community room, fitness area, computer room, conference areas, just general spaces for residents to gather and to have events. There is a small section of area to the south of the main lobby that has offices for management.” Tr. 98-100.

Mr. Kershner also testified as to the materials to be used in the building façade, the location of the generator, and their compatibility with the surrounding neighborhood (Tr. 101-104):

[T]he main materials that we're using are going to be cement poured panels, cement-based product. Masonry at the lower level, and then punched openings for the windows. . . . The panels themselves will be broken up by different colors to create a visual interest to the façade. The colors will be in line with the surroundings.

. . . So the generator is going to be located on the rear side of the building. . . . The impact of that location is minimal as there are no real adjacent properties located right by the generator. . . .

. . . We looked at the existing church building and this design, I think is in harmony with the existing church building which is the main structure that it would be adjacent to. I can't say that the design will be compatible or in harmony with the surrounding residences because of the different type of building, the different use. But I can say that the impact will be very minimal given the distance from surrounding properties, as well as screening in the form of trees and landscaping, and topography.

Mr. Kershner indicated that although the building materials and style of building are not similar to single-family residences, the proposed building will have minimal impact on the single-family residences in the neighborhood because of distance and screening. He agreed that since it will be minimally visible due to distance and screening, it will be compatible with the neighborhood in that sense. Tr. 105.

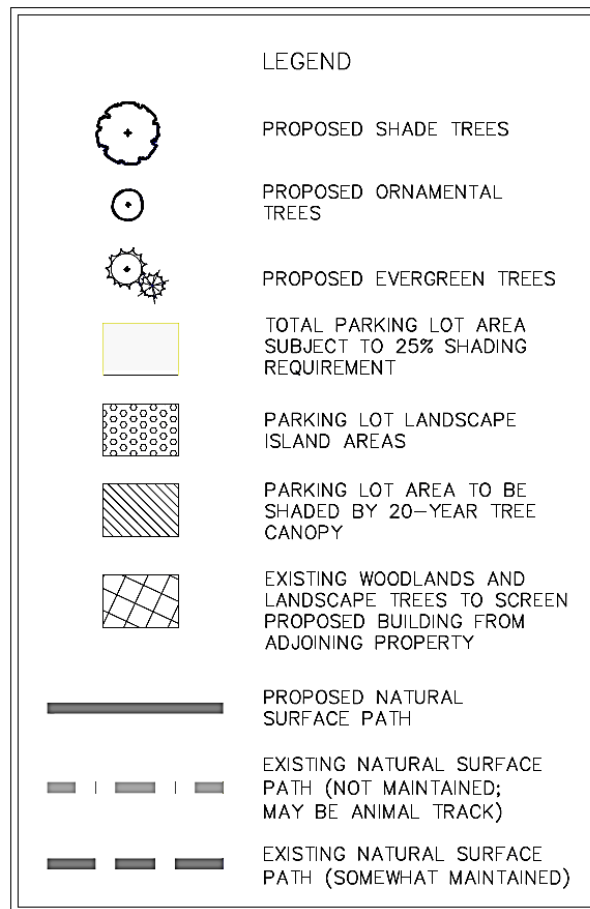
Since Mr. Kershner would not commit to the final colors of the proposed building, the Hearing Examiner noted that any significant changes from the colors depicted in the images shown in Exhibits 55(a) and (b) would require a request to amend the conditional use plans. The Applicant's counsel agreed to that condition. Tr. 106-108.

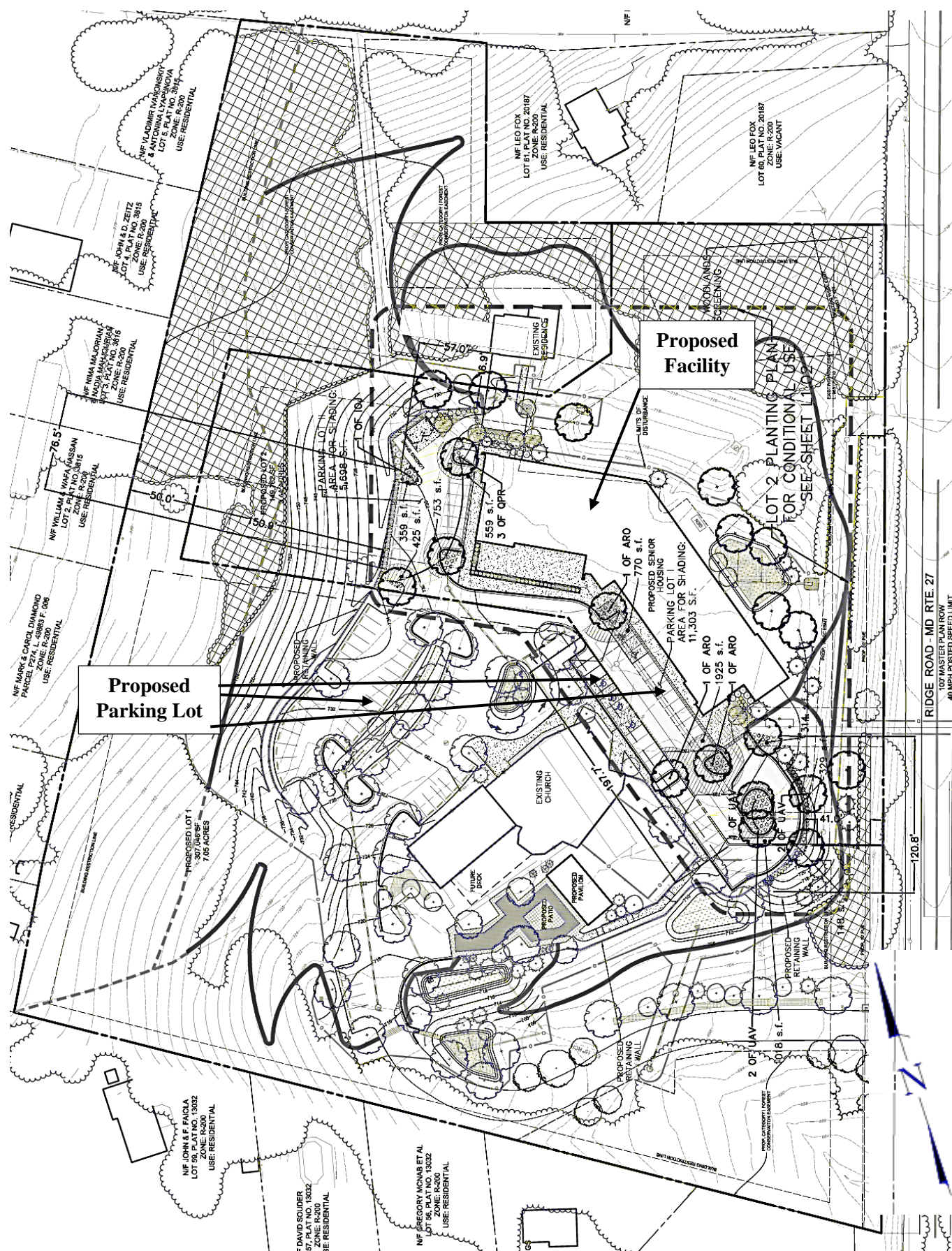
As mentioned by Technical Staff, the Applicant proposes to enter into a Joint Parking Agreement (Exhibit 42) by which it can satisfy the 5-parking space shortfall on the subject site. That arrangement and the Applicant's request for a parking lot setback waiver are discussed in Part III.D.2. of this Report and Decision, the section of the General Development Standards pertaining to parking.

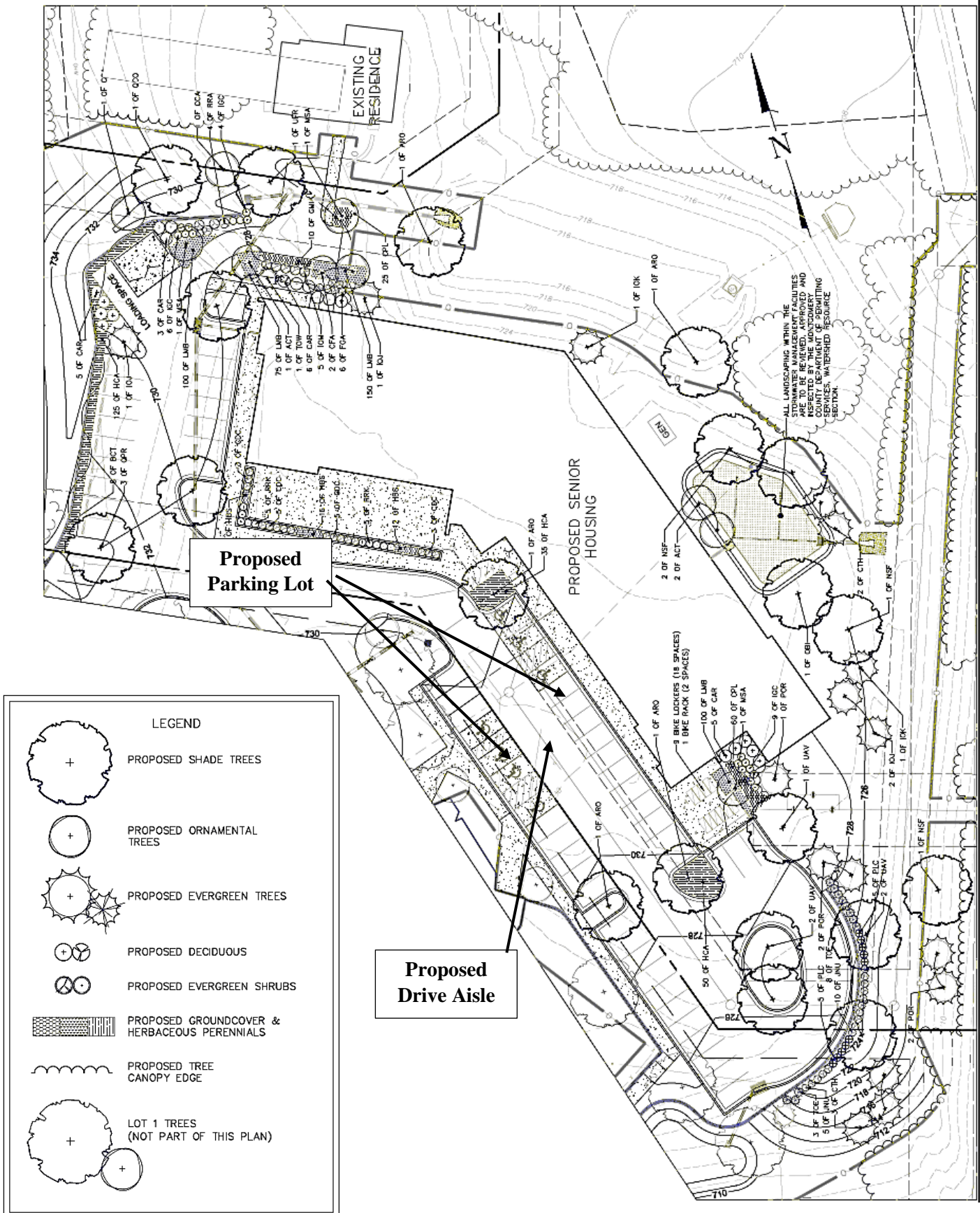
2. Site Landscaping, Lighting and Signage

a. Landscaping:

Landscaping proposed for the site is shown on Applicant's revised "Conditional Use Landscape Plan" (Exhibits 41(c), (d) and (e)). Portions of these plans are reproduced below and on the following pages (omitting some details):







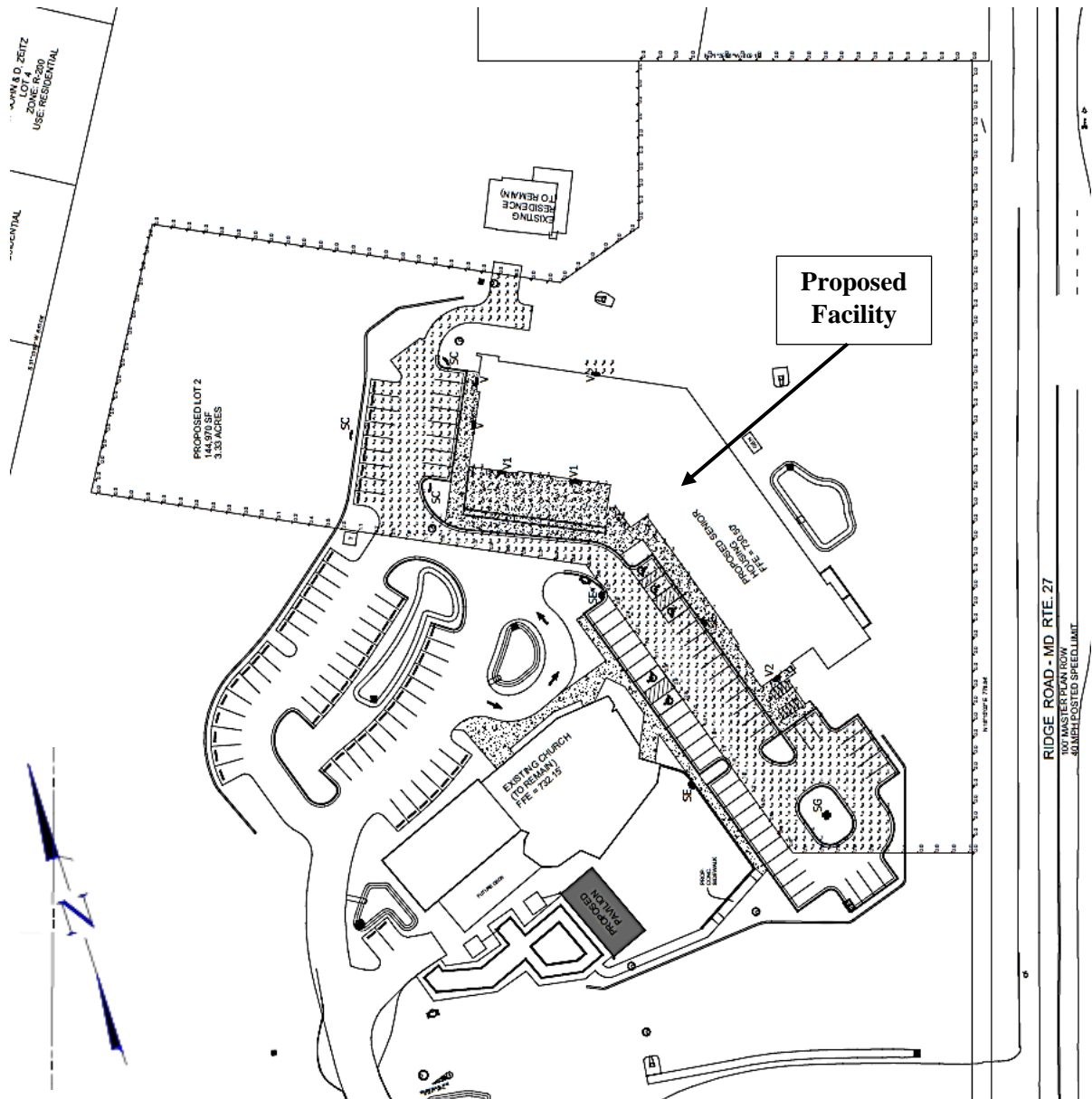
LANDSCAPE PLANT LIST For Conditional Use								
KEY	QTY	BOTANICAL NAME	COMMON NAME	CAL	HGT	SPD	ROOT	SPACING
SHADE TREES								
ARO	5	Acer rubrum 'October Glory'	October Glory Red Maple	2½ -3"			B&B	
NSF	4	Nyssa sylvatica 'NXSXF'	Forum Black Gum	2½ -3"			B&B	
QBI	1	Quercus bicolor	Swamp White Oak	2½ -3"			B&B	
QCO	1	Quercus coccinea	Scarlet Oak	2½ -3"			B&B	
QPR	3	Quercus prinus	Chestnut Oak	2½ -3"			B&B	
UAV	5	Ulmus americana 'Valley Forge'	Valley Forge Elm	2½ -3"			B&B	
UFR	1	Ulmus 'Frontier'	Frontier Elm	2½ -3"			B&B	
EVERGREEN TREES								
CTH	5	Chamaecyparis thyoides	Atlantic White Cedar		5-6'		B&B	
IOJ	4	Ilex opaca 'Jersey Princess'	Jersey Princess American Holly		5-6'		B&B	
IOK	2	Ilex opaca 'Jersey Knight'	Jersey Knight American Holly		5-6'		B&B	
POR	5	Picea orientalis	Oriental Spruce		5-6'		B&B	
TOE	11	Thuja occidentalis 'Emerald'	Emerald Arborvitae		3-4'		Cont.	
TOW	1	Thuja occidentalis 'Wintergreen'	Wintergreen Arborvitae		5-6'		Cont.	
ORNAMENTAL TREES								
ACT	3	Amelanchier canadensis 'Trazam'	Tradition Serviceberry		7-8'		B&B	
CCA	2	Cercis canadensis	Eastern Redbud		7-8'		B&B	
CFA	2	Cornus florida 'Appalachian Spring'	Appalachian Spring Dogwood		6-7'		B&B	
MSA	3	Magnolia x soulangiana 'Alexandria'	Alexandria Magnolia		7-8'		B&B	
DECIDUOUS SHRUBS AND VINES								
BCT	8	Bignonia capreolata 'Tangerine Beauty'	Tangerine Beauty Cross Vine				#2 Cont.	As shown
CAR	19	Clethra alnifolia 'Ruby Spice'	Ruby Spice Summersweet		24-30"		Cont.	60" o.c.
FGA	6	Fothergilla gardenii	Dwarf Fothergilla		18-24"		Cont.	36" o.c.
JNU	15	Jasminum nudiflorum	Winter Jasmine				#3 Cont.	36" o.c.
RRA	4	Rosa rugosa 'Alba'	White Rugosa Rose		24-30"		Cont.	48" o.c.
RRK	10	Rosa x 'Radcor'	Rainbow Knock Out Rose		24-30"		Cont.	36" o.c.
EVERGREEN SHRUBS								
CDC	16	Cotoneaster dammeri 'Coral Beauty'	Coral Beauty Cotoneaster			18-24"	Cont.	36" o.c.
IOM	5	Ilex opaca 'Maryland Dwarf'	Maryland Dwarf American Holly			18-24"	Cont.	48" o.c.
IGC	19	Ilex glabra 'Compacta'	Compact Inkberry		18-24"		Cont.	36" o.c.
PLC	10	Prunus laurocerasus 'Chestnut Hill'	Chestnut Hill Cherry laurel		18-24"		Cont.	36" o.c.
GROUNDCOVER / HERBACEOUS PERENNIALS								
CPL	85	Ceratostigma plumbaginoides	Leadwort				1 Qt. Cont.	18" o.c.
GMI	10	Geranium macrorrhizum 'Ingwersen's Variety'	Ingwersen's Variety Geranium				1 Qt. Cont.	24" o.c.
HBS	37	Heimerocallis 'Blackeyed Stella'	Blackeyed Stella Daylily				#1 Cont.	18" o.c.
HCA	210	Hypericum calycinum	St. Johns Wort				1 Qt. Cont.	24" o.c.
LMB	425	Liriope muscari 'Big Blue'	Big Blue Lilyturf				4" Pots	12" o.c.

As noted by Technical Staff (Exhibit 45, p. 14), “The Project is adequately screened from the adjoining residential lots by existing forest, landscaped trees, and reforestation plantings . . .” Landscaping and screening will be discussed in greater detail in Part III.D.3 of this Report and Decision.

As discussed above, Applicant’s architect testified that “the impact will be very minimal given the distance from surrounding properties, as well as screening in the form of trees and landscaping, and topography.” Tr. 104

b. Lighting:

The Lighting Plan for the subject site (with photometrics) is contained in two pages (Exhibits 24 and 25), which are set forth below:



LIGHT FIXTURE SCHEDULE					
TYPE	DESCRIPTION	VOLT	MOUNTING	LAMPS	MANUFACTURER/MODEL #
F	6" ROUND LED DOWNLIGHT, CLEAR APERTURE/TRIM, SEMI-SPECULAR FINISH, WET LOCATION LISTED	MVOLT	RECESSED	20.5W LED 1500 LUMENS 4000K	LITHONIA LIGHTING LDN6 40/15 LOGAR L55 MVOLT EZ10 WL
SC	POLE MOUNTED AREA LIGHT, CAST ALUMINUM HOUSING, DARK BRONZE FINISH WITH TYPE 1 SHORT DISTRIBUTION	MVOLT	POLE AT 15'-0"	38W LED 4706 LUMENS 4000K	LITHONIA LIGHTING DSX0 LED P1 40K T15 MVOLT RPA DDBXD POLE: AMERICAN LTTE POLE RNS-15-40-11-AB
SE	POLE MOUNTED AREA LIGHT, CAST ALUMINUM HOUSING, DARK BRONZE FINISH WITH TYPE 4 MEDIUM DISTRIBUTION	MVOLT	POLE AT 15'-0"	71W LED 8269 LUMENS 4000K	LITHONIA LIGHTING DSX0 LED P3 40K T4M MVOLT RPA DDBXD POLE: AMERICAN LTTE POLE RNS-15-40-11-AB
SG	POLE MOUNTED AREA LIGHT, CAST ALUMINUM HOUSING, DARK BRONZE FINISH WITH TYPE 5 MEDIUM DISTRIBUTION	MVOLT	POLE AT 15'-0"	38W LED 4891 LUMENS 4000K	LITHONIA LIGHTING DSX0 LED P1 40K T5M MVOLT RPA DDBXD POLE: AMERICAN LTTE POLE RNS-15-40-11-AB
V	LED WALL FIXTURE, DARK BRONZE FINISH WITH ONE LIGHT ENGINE & TYPE 2 SHORT DISTRIBUTION	MVOLT	WALL AT 7'-0" ABOVE GRADE	13W LED 1520 LUMENS 4000K	LITHONIA LIGHTING DSXW1 LED 10C 350 40K T25 MVOLT DDBXD
V1	LED WALL FIXTURE, DARK BRONZE FINISH WITH TWO LIGHT ENGINES & TYPE 2 SHORT DISTRIBUTION	MVOLT	WALL AT 11'-6" ABOVE GRADE	35W LED 4380 LUMENS 4000K	LITHONIA LIGHTING DSXW1 LED 20C 530 40K T25 MVOLT DDBXD
V2	LED WALL FIXTURE, DARK BRONZE FINISH WITH ONE LIGHT ENGINE & TYPE 4 MEDIUM DISTRIBUTION	MVOLT	WALL AT 7'-0" ABOVE GRADE	26W LED 2701 LUMENS 4000K	LITHONIA LIGHTING DSXW1 LED 10C 700 40K T4M MVOLT DDBXD

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

Technical Staff's review of the lighting levels found that the grounds will be adequately lit and that the lighting will not intrude across the property lines (Exhibit 45, p. 15):

Pole mounted light fixtures, wall fixtures, and recessed light canisters are proposed as shown on the Applicant's lighting plan and schedule. All lights are LED fixtures with full cut-off to eliminate horizontal light cast. The photometric plan predicts that no light above 0.0 foot-candles will spill across any Property boundary of the existing property lines and adjoining residences. The lighting plan is adequate, providing visibility to the areas for vehicular and pedestrian circulation during nighttime hours. The lighting will not have a negative impact to neighboring property owners with either direct light or light glare. As such, the lighting plan satisfies the requirements of Sec. 6.4.4. This standard is satisfied.

c. Signage:

Technical Staff indicates that "No signs are proposed at this time for the conditional use."

Exhibit 45, p. 15. However, the Applicant states the following in its Statement of Justification (Exhibit 8, p. 8):

A ground mounted site sign will be located at the entrance driveway. As this is a residential zone, only a two (2) square foot sign is permitted. Ridge Road is a very high-traffic corridor. In order to catch the attention and to notify passing travelers of the location of the facility, a larger freestanding sign will be necessary than what is permitted in residential zones. Once a design and dimensions are determined, a sign variance will be applied for with the Montgomery County Sign Review Board, and details of the sign will be submitted as a supplement to this application.

In anticipation of Applicant's future sign proposal, the Hearing Examiner has imposed the following condition in Part IV of this Report and Decision:

If the Applicant seeks to install an exterior sign, it must first obtain a sign permit from the Department of Permitting Services for any proposed sign, and must file a copy of any such sign permit with OZAH and amended plans showing the sign's location and details. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board.

3. Operations

Technical Staff summarized proposed operations on the site (Exhibit 45, p. 9):

Customary support staff include a property manager, assistant manager, maintenance technician, and porter. Typically, staff will be present on weekdays between the hours of 9:00 am and 5:00 pm., and during evenings and weekends if special events for residents are planned. The maximum weekday staff proposed are three. The maximum weekend staff proposed is one, unless a special event is scheduled. Specialists may visit the facility to conduct programs beneficial to senior residents. Examples of such programs are bridge or card game lessons, educational or travel presentations, wellness classes, and the like. The Applicant proposes to coordinate other similar activities with the church and residents.

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To satisfy Sec. 59-3.3.0.C.2.ii, the Applicant indicates that a majority of units will be reserved for persons with incomes below 60 percent of the average median income (AMI) for Montgomery County. Occupancy of dwelling units will be restricted to senior adults, members of the household of a senior adult, and a resident care-giver as provided by Sec. 59-3.3.2.C.2ii.

The Applicant more broadly described its intended operations in its Statement of Justification (Exhibit 8, pp. 8-9):

To use a phrase contained in a recent Hearing Examiner's Report and Recommendation for another seniors living facility elsewhere in the County, the proposed seniors community will be operated "24 hours per day, seven days per week, 365 days per year." This phraseology accurately describes the activity level that St. Anne's anticipates for its proposed independent elderly facility that can accommodate residents as young as 62 years of age.

In its planning, St. Anne's has elected to construct seventy-six (76) units which it assumes will generate approximately eighty (80) residents although it wishes to bind itself only to the number of units, not the number of residents, to allow some flexibility in the mix of units and the occupancy of units.¹

The majority of the proposed units are intended for individuals with incomes below 60% of the "Average Median Income" (AMI) for Montgomery County. By the time of the public hearing, the Petitioner will be able to advise the Hearing Examiner of the manner in which the application will satisfy the requirements of Section 59-3.3.2.C.2.ii regarding the percentage of units reserved for families of varying incomes.

¹ At the hearing, Christopher Everett, the Applicant's expert in developing and operating affordable senior housing, testified that the facility would likely have up to 86 bedrooms in 76 units (10 of which would be two-bedroom units), and thus up to 86 residents. Tr. 35.

Staff will typically be present on weekdays between the hours of 9 a.m. and 5 p.m. and in the evenings and on weekends if special events are planned. Staff will consist of a property manager, a maintenance technician, a porter and an additional person who, with the property manager, will be responsible for coordination with residents and their needs. The maximum weekday staff on-site at any one time will be three (3). The maximum weekend staff at any one time would be one person unless there is a special event scheduled.

Specialists or persons with areas of expertise of interest for seniors may visit the facility to conduct programs for the benefit of the residents, such as bridge lessons, educational or travel presentations or wellness classes for seniors. Additionally, the Petitioner hopes to involve the residents of the seniors building in the activities offered for and by the adjacent church, and vice versa.

Community areas within the proposed building that are available to all residents will include a lobby, community room, sitting room, library, wellness suite, fitness room, cyber café and property management office suite.

The proximity of the town of Damascus means that residents of the facility will have adequate access to medical services, shopping, recreation, cultural and other community services desired or needed by senior adults. Indeed, management of the facility will help residents make arrangements to visit locations where such services are available.

D. Environmental Issues

Examination of environmental impacts begins with the Applicant's Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) No. 4-02134 (Exhibit 27), which was approved by the Planning Department on January 17, 2012. It describes the existing environmental site conditions. Technical Staff summarizes the environment in and around the site (Exhibit 45, pp. 15-16):

The site is located in within the Great Seneca Creek watershed, a Use I stream in fair condition. An intermittent stream originates at the end of a stormwater management outfall on the south side of the entrance drive. Approximately 40 percent of the site is composed of highly erodible soils. These are clustered primarily in upper undisturbed shelf on the north western edge and along the southern third of the site.

The existing forest conservation plan (SC2002011) was approved as part of the church expansion in 2002. The forest conservation plan required that 2.2 acres of the existing 2.75 acres of forest be permanently protected with a Category I easement. This easement was never recorded, but the areas of forest protection

remain undisturbed as approved. This revision to the forest conservation plan proposes to rearrange the original configuration of the protected areas:

- a. The forested slope along the Property frontage will not be shown as forest protection. Although this extreme steep slope should be left undisturbed to keep the soils stable, the required public utility easement along the Ridge Road right-of-way reduced the width of the forest to less than 50-feet and no longer meets the definition of forest.
- b. The area of easement on the south side of the driveway should be extended to the edge of the driveway maintenance area and planted with forest to further protect the intermittent stream.
- c. The areas of proposed easement on the upper shelf of the Property will be extended to make up for the easement acreage lost to the Property frontage. Forest planting will take place in all unforested easement areas.

The final easement area will match the area required on the original forest conservation plan. The location of the easement areas will be impacted by final design of the stormwater management system and the location of necessary utilities.

The Applicant has submitted a proposed amended Forest Conservation Plan (Exhibits 41(f) and (g)), which will be reviewed by the Planning Board at Subdivision, along with its Stormwater Management Concept Plan (Exhibit 30). Conditions have been imposed in Part IV of this Report and Decision requiring approval of the Stormwater Management Plan and the proposed revisions to the Forest Conservation Plan.

Applicant's stormwater management concept plan (Exhibit 30) was approved by the Department of Permitting Services on June 26, 2018 (Exhibit 53). Applicant's civil engineer, Kenneth Jones, testified that the proposed stormwater management plan, including the bio-retention facilities that will be added, will meet all state and county environmental site design standards. Tr. 70-72.

The Applicant's expert engineering evidence was unrefuted at the hearing. Based on that evidence and Technical Staff's approval of the amended plans, the Hearing Examiner finds that the proposed development, as described, will not harm the environment.

E. Community Response

There has been no response from the surrounding neighborhood regarding this proposal either to OZAH or to Technical Staff. Exhibit 45, p. 16.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for an Independent Living Facility for Seniors or Persons with Disabilities. *Section 59.3.3.2.C.2.c.*

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in Zoning Ordinance §59. 7.1.1., the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, will satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner’s findings for each standard, are set forth below:²

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

- a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;***

² Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: Technical Staff reports that there has been a church building, one detached dwelling and a parking lot on the subject site since 1962 (Exhibit 45, p. 17). With subdivision carving out a separate lot for the proposed independent living facility, and with a shared parking agreement, approval of an amended forest conservation plan, and a conditional use permitting the operation of the new facility, the Hearing Examiner finds that the proposed development will satisfy all previous approvals on the subject site.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

Conclusion: This subsection requires an analysis of the standards of the R-200 Zone contained in Article 59-4; the use standards for an Independent Living Facility for Seniors or Persons with Disabilities contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III. B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 45, pp. 17 and 25), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

c. substantially conforms with the recommendations of the applicable master plan;

The property lies within the geographic area covered by the 2006 Damascus Master Plan. As noted by Technical Staff (Exhibit 45, pp. 12-13), the Master Plan established three transition areas that reflect a decrease in residential density when moving away from the Damascus Town Center: Town Neighborhood, Neighborhood Transition, and Rural Transition areas. The subject site is located in the Neighborhood Transition area, where “a moderate increase in density” is recommended. *Master Plan, p. 26.*

Staff observes that the Master Plan does not specifically address the subject site, “However,

the Project substantially conforms with the general recommendations of the Master Plan and is not inconsistent with the Plan's general land use and housing goals." Exhibit 45, p. 12. Staff lists two applicable recommendations of the Master Plan, and notes the application's consistency therewith:

- *Provide a variety of housing options including affordable housing and housing opportunities for seniors suitable to the small-town character of Damascus (Master Plan, p. 43).*

The Project consists of age-restricted affordable senior housing units. The Applicant has not determined the number of affordable units but has indicated at least a majority of the units will be affordable. As conditioned, the Project is consistent with this recommendation.³

- *Ridge Road South Neighborhood: The R-200 Zone is proposed in this neighborhood located along the west side of Ridge Road between Bethesda Church Road and Oak Drive. Although few properties without homes remain, some lots are large enough that some re-development might occur. (Master Plan, p. 25).*

The Project consist[s] of age-restricted senior housing and affordable housing units. The Property is located on the west side of Ridge Road between Bethesda Church Road and Oak Drive. The Property is large enough in land area to accommodate the proposed building. As such, the Project is consistent with this recommendation.

Conclusion: The Hearing Examiner agrees with Staff's findings. There is no contrary evidence in this case, and based on this record, the Hearing Examiner finds that the proposed use substantially conforms with the recommendations of the 2006 Damascus Master Plan.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Conclusion: This provision is a mix of Master Plan analysis and compatibility considerations. The Master Plan issues have been discussed in connection with the previous provision, and the Hearing Examiner concluded that the proposed use substantially conforms to the Master Plan's recommendations. Compatibility is a question that crosses a number of topics, including the nature of the surrounding uses; any potential adverse impacts; the design of the proposed

³ Although the proposed facility is not in the Town Center, as the Master Plan indicates would be most appropriate and convenient (MP, p. 43), the proposed location still satisfies the overall Master Plan goal quoted above.

building, including its height, density and architecture; traffic generation; and additional issues discussed in other sections below.

The Hearing Examiner agrees with Technical Staff's conclusion regarding this provision (Exhibit 45, p. 18):

. . . The character of the surrounding area is residential, consisting of single-family attached and detached homes. The Project will not alter the character of the surrounding neighborhood in a manner inconsistent with the master plan because the use is residential in character and adequately buffered with landscaping, and sufficiently located away from any sensitive land uses or dwelling units. Staff concludes that the use will be harmonious with the surrounding uses.

The addition of the proposed use would not be “alter[ing] the character of the surrounding neighborhood,” which is the question posed by this provision. The neighborhood consists of the existing church, suburban residential homes, townhouses and vacant school district property. Clearly, the proposed use will be compatible with the adjacent church which owns the property, and it will be consistent with the Master Plan. Being residential in character and well screened, the proposed use will exist in harmony with other residential areas in the vicinity. Based on this record, the Hearing Examiner finds that the proposed use will be harmonious with the neighborhood.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Conclusion: As discussed on page 8 of this Report and Decision, the neighborhood consists primarily of suburban residential homes, townhouses and vacant school district property. There is only one conditional use/special exception (S-100) located within the defined neighborhood at 24939 Ridge Road, south of the subject site. It was approved in 1972 for a veterinary hospital, and it has been in continuous operation since then. The Hearing Examiner agrees with Technical Staff's

conclusion that the addition of this one conditional use to a neighborhood with only one other conditional use will not create an overconcentration of conditional uses in the area. Exhibit 45, p.

18. Thus, the Hearing Examiner finds that the proposed use will not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Moreover, as specified in the last clause of the provision, “a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area.”

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: According to the statutory provisions quoted above, the Hearing Examiner is not required to make a finding regarding the adequacy of public services and facilities (APFO) in this case because a preliminary plan of subdivision will be required. It is thus the Planning Board that is charged with the responsibility of making the appropriate APFO findings.

Technical Staff so noted in their report (Exhibit 45, p. 18):

This finding is satisfied. Adequate public services and facilities will be reviewed as part of proposed Preliminary Plan No. 120180230.

Nevertheless, transportation and storm drainage issues can have impacts on safety in, and compatibility with, the neighborhood, and thus some discussion of those issues is warranted.

As recommended by the Planning Board, a condition is imposed in Part IV of this Report and Decision requiring that prior to the approval of the Preliminary Plan of Subdivision application, the Applicant must obtain approval from the Montgomery County Department of Permitting Services of the stormwater management concept plan.⁴ Applicant's civil engineer, Kenneth Jones, testified that the proposed stormwater management plan (Exhibit 30), including the bio-retention facilities that will be added, will meet all state and county environmental site design standards. Tr. 70-72.

The Applicant's expert engineering evidence was unrefuted at the hearing. There is no evidence in this record that the planned use would create any stormwater drainage issues that would adversely affect the neighbors. Based on that evidence and Technical Staff's approval of the Applicant's proposal, the Hearing Examiner finds that the proposed development, as described, will not harm the environment.

With regard to transportation issues, the Applicant's traffic engineer, Nicole White, prepared a report (Exhibit 31, p. 2) concluding that "the senior housing development would result in 23 new person trips during the AM peak hour and 29 new person trips during the PM peak hour. Both of the peak hour periods would result in less than 50 person trips. Thus, a TIS [Traffic Impact Study] would not be required for the project in accordance with LATR [Local Area Transportation Review] and SHA [State Highway Administration] guidelines."

⁴ As previously mentioned, the Applicant's stormwater management concept plan (Exhibit 30) was approved by the Department of Permitting Services on June 26, 2018 (Exhibit 53). However, the Hearing Examiner realizes that the concept plan may be modified prior to subdivision, and has therefore kept the condition recommended by the Planning Board requiring DPS approval of the stormwater management concept plan prior to subdivision approval.

Technical Staff agreed with this assessment, though it listed somewhat different figures for the number of new trips that would be generated by the project (Exhibit 45, p. 14):

According to the Institute of Transportation Engineer's (ITE) 10th Edition Trip Generation Manual and adjusted for the Damascus Policy Area, this project will produce a net increase of 34 AM peak hour trips and 31 PM peak hour trips. The Applicant is not required to submit a traffic study to satisfy the LATR test because the proposed land use generates fewer than 50 peak-hour person trips within the weekday morning and evening peak periods.

Addressing this discrepancy between projected trips listed by Technical Staff and her own Traffic Statement, Ms. White testified that "ITE [Institute of Transportation Engineers] recently updated its trip generation manual and our report was based on the 9th edition and then it looks like the County may have updated to the 10th edition, and therefore they have slightly higher total trips, still below the 50 trips that I show." Tr. 112.

In any event, both Staff and Applicant's transportation planner agree that the new use will generate fewer than 50 new person trips at the site. Ms. White indicated that given these figures it was "safe to assume" that the transportation network is adequate to accommodate the trips that will be generated by the proposed facility. Tr. 111. She also found that access to the site was adequate, but did not examine internal circulation on the site. Tr. 113. The Applicant's engineer, Kenneth Jones, testified that sight distances at the access point far exceed the state's safety requirements based upon the speed limit of the road. Tr. 86.

Fortunately for the Applicant, Technical Staff did review the proposed internal circulation plan, and found it to be "safe and adequate for the use." Exhibit 45, p. 14.

Moreover, the Applicant's plans call for adding a number of pedestrian facilities on site (Exhibit 45, p. 13):

. . . Internal to the site, this application proposes adding ADA compliant sidewalk running along the south facing side of the proposed senior housing structure. An additional sidewalk is proposed along the south facing side of the existing church, providing access to a proposed pavilion and plaza area.

In sum, the Hearing Examiner finds that the adequacy of public facilities will be determined at subdivision,⁵ but based on the present record, the proposed development will not produce traffic that will create compatibility problems or undue harm to the health, safety, or welfare of neighboring residents, visitors, or employees.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the harm caused by the adverse effects would be “undue.”

In the subject case, Technical Staff listed the following physical and operational characteristics that are necessarily associated with (*i.e.*, inherent in) an Independent Living Facility for Seniors or Persons with Disabilities (Exhibit 45, p. 19):

⁵ The Hearing Examiner notes that if it had been the Hearing Examiner’s responsibility to determine the adequacy of public facilities, Ms. White’s statement that it was “safe to assume” such adequacy would not have been sufficient.

- Vehicle and pedestrian trips to and from the Property;
- Parking for residents and employees;
- Varied hours of operation;
- Noise or odors associated with vehicles;
- Noise or odors associated with trash collection and trucks;
- Emergency electrical generator; and
- Lighting.

Staff noted that the unusual topography of the site was a non-inherent characteristic which would require retaining walls, in that “[t]here is approximately a 60 ft. grade differential between the northwest corner of the site (elevation 760) and the grade level of Ridge Road (elevation 700) in front of the property.” Exhibit 45, p. 19. At the time Staff prepared its report, it was thought that the then proposed height of the retaining walls would require a setback variance; however, subsequent changes to the plans (Exhibits 40, 41 and 41(a)-41(i)) shortened the proposed retaining walls and eliminated the need for a setback variance.

Technical Staff found that “. . . the Project’s non-inherent characteristics would not cause an adverse effect with regard to inherent or non-inherent characteristics, or combination thereof . . .” in any of the categories listed in this provision of the Zoning Ordinance. Staff therefore concluded (Exhibit 45, p. 19):

The inherent physical and operational characteristics associated with a senior residential apartment building will not cause undue harm to the neighborhood.

The Hearing Examiner agrees with Staff’s conclusion. There is nothing in this record indicating that the proposed facility would differ significantly in structure, façade, location, site design, operations or relationship with the surrounding neighborhood so as to distinguish its expected effects from those that would be typical of (*i.e.*, inherent in) this type of independent living facility for seniors or persons with disabilities.

Moreover, even if there were some indication of non-inherent adverse effects, the Hearing Examiner would have to assess whether any potential harms would actually occur, and

if so, whether they would result, at least in part, from the identified non-inherent adverse effects. If both of these questions were answered in the affirmative, the Hearing Examiner would then determine whether any of these purported harms are “undue” within the meaning of the Zoning Ordinance.

The Hearing Examiner finds that there is no evidence in this record of potential undue harm to the neighborhood from any of the categories of harm listed in Zoning Ordinance §59.7.3.1.E.1.g.

Section 59.7.3.1.E.2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Conclusion: Zoning Ordinance §59.7.3.1.E.2. requires an examination of the compatibility of the use with the character of the residential neighborhood in which it is located. This question is similar to the one raised by Zoning Ordinance §59.7.3.1.E.1.d., above, which asked whether the proposed use will be harmonious with the neighborhood or would alter its character. In response to that question, the Hearing Examiner found that the proposed use would not alter the character of the neighborhood, considering the surrounding development in the immediate vicinity of the subject site and the planned screening.

Applicant’s architect, John Kershner, addressed the question of compatibility at the hearing somewhat obliquely. Mr. Kershner testified (Tr. 104):

... We looked at the existing church building and this design, I think is in harmony with the existing church building which is the main structure that it would be adjacent to. I can't say that the design will be compatible or in harmony with the surrounding residences because of the different type of building, the different use. But I can say that the impact will be very minimal given the distance from surrounding properties, as well as screening in the form of trees and landscaping, and topography.

When pressed, Mr. Kershner agreed that the proposed building would be compatible with

the neighborhood in the sense that it will have minimal impact on the single-family residences in the neighborhood because of distance and screening. Tr. 105.

Technical Staff was more direct, stating (Exhibit 45, p. 20):

. . . There is a variety of building scales, forms, and design details exhibited in the neighborhood. The existing church architecture is modern and is representative of 1962 institutional designs of this type. The architecture of the Project is contemporary in design and form. The visual character of the neighborhood is mixed with detached dwelling, townhomes and institutional uses, such [as] a church and school buildings. Therefore, the proposed residential building is not out of character and is compatible with the surrounding residential neighborhoods.

Based on this record, the Hearing Examiner finds that the proposed use, an Independent Living Facility for Seniors or Persons with Disabilities, designed as it is with a well-screened multi-unit residential style architecture in an area with mixed uses, will be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-200 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff included a table comparing the minimum development standards of the R-200 Zone to what is provided in the conditional use site plan. Exhibit 45, p. 11. Since there is no longer a need for a variance, the table rows and footnotes discussing accessory building setbacks for the retaining walls have been omitted. The portions of the Table discussing parking spaces and parking lot setbacks have been moved to Part III.D.2. of this Report and Decision, where the

parking space and setback requirements of Article 59-6 are discussed, along with the Applicant's parking setback waiver request. Finally, some of the development standards for the Zone were modified for this type of conditional use by Zoning Ordinance §§59.3.3.2.C.2.c.iv. to c.ix. In those cases, the Hearing Examiner has substituted the applicable standards from those subsections into Staff's Table, below, rather than the general provisions for the R-200 Zone in Section 4.4.7.B.:

**Section 59.4.4.7.B. R-200 Zone, Standard Method Development Standards,
as Modified by Sections 59.3.3.2.C.2.c.iv. to c.ix**

Development Standards (R-200)	Required	Proposed
Minimum Lot Area	20,000 sq. ft.	3.44 acres
Minimum Lot Width		
At street line (front lot line)	25 ft.	479 ft.
At building line	100 ft.	479 ft.
Maximum Lot Coverage	25%	13%
Minimum Building Setback		
Front	50 ft.* (40 ft. for R-200)	73 ft.
Side	25 ft.* (12 ft. for R-200)	32 ft.
Sum of Side Setbacks	50 ft.* (25 ft. for R-200)	82 ft.
Rear	30 ft.	208 ft.
Maximum Building Height	60 ft.* (50 ft. for R-200)	45 ft.
Maximum Density	As determined by Hearing Examiner*	23 units per acre (76 units on 3.44 acres)
Minimum Green Area	60%* (Unspecified for R-200)	75%

*Per the development standards set forth in §59.3.3.2.C.2.c.iv. to c.ix.

Conclusion: As is evident in the above Table, the application and the proposed development meet all of the applicable development standards established for the R-200 Zone, as modified by Zoning Ordinance §§59.3.3.2.C.2.c.iv. to c.ix. Therefore, the proposed development satisfies the requirements of Division 59.4 of the Zoning Ordinance. The Hearing Examiner so finds.

**C. Use Standards for an Independent Living Facility for Seniors or Persons with
Disabilities (Section 59.3.3.2.C.2.c.)**

The specific use standards for approval of an Independent Living Facility for Seniors or Persons with Disabilities are set out in Section 59.3.3.2.C.2.c. of the Zoning Ordinance.

Zoning Ordinance §59.3.3.2.C.⁶

C. Independent Living Facility for Seniors or Persons with Disabilities

1. Defined

Independent Living Facility for Seniors or Persons with Disabilities means a building containing dwelling units and related services for senior adults or persons with disabilities. Independent Living Facility for Seniors or Persons with Disabilities includes meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations.

2. Use Standards

a. Where an Independent Living Facility for Seniors is allowed as a limited use, it must satisfy the following standards:

- i. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.*
- ii. Resident staff necessary for the operation of the facility are allowed to live on-site.*
- iii. Occupancy of a dwelling unit is restricted to the following:*
 - (a) a senior adult, as defined in Section 1.4.2, Defined Terms;*
 - (b) other members of the household of a senior adult, regardless of age;*
 - (c) a resident care-giver, if needed to assist a senior resident; or*
 - (d) a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist seniors as defined in that program.*
 - (e) If imposing age restrictions that would limit occupancy otherwise allowed by this Subsection, the facility must only impose age restrictions that satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, as amended, or the state Fair Housing Act, Subtitle 7 of Title 20 of the Annotated Code of Maryland, State Government Article, as amended.*

b. Where an Independent Living Facility for Persons with Disabilities is allowed as a limited use, it must satisfy the following standards:

- i. The facility must meet all applicable federal, state, and County licensure, certificate, and regulatory requirements.*
- ii. Resident staff necessary for the operation of the facility are allowed to live on-site.*
- iii. Occupancy of a dwelling unit is restricted to the following:*

⁶ This Section (§59.3.3.2.C.) is shown as amended in ZTA 16-15, adopted 2/7/17 in Ord. No 18-24, eff. 2/27/17.

- (a) a person with disabilities, as defined in Section 1.4.2, Defined Terms;*
- (b) other members of the household of a person with a disability, regardless of age;*
- (c) a resident caregiver, if needed to assist a resident with a disability; or*
- (d) a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist persons with disabilities as defined in that program.*

c. Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:

- i. The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities. The application must include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.*
- ii. The Hearing Examiner may restrict the availability of ancillary services to nonresidents and specify the manner in which this is publicized. Retail facilities may be included for the exclusive use of the residents of the building.*
- iii. A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.*
- iv. The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is 60 feet and the maximum density is determined by the Hearing Examiner under the development standards of Section 3.3.2.C.2.b.vi through Section 3.3.2.C.2.b.ix, without regard to any other limitation in this Chapter.*
- v. Height, density, coverage, and parking must be compatible with surrounding uses and the Hearing Examiner may modify height, density, coverage, and parking to maximize the compatibility of buildings with the residential character of the surrounding neighborhood.*
- vi. The minimum front setback is 50 feet. Except for an access driveway, this setback area must be maintained as green area; however, if development does not exceed the height limit of the applicable Residential zone, the minimum setback specified by the zone applies.*

vii. The minimum side and rear setback is 25 feet or as specified by the relevant zone, whichever is greater.

viii. The minimum green area is:

(a) 70% in the RE-2, RE-2C, and RE-1 zone, except where the minimum green area requirement is established in a master plan;

(b) 60% in the R-200 zone; and

(c) 50% in the R-60, R-90, and Residential Townhouse zones.

ix. The Hearing Examiner may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.

We now examine Applicant's compliance with Section 59.3.3.2.C.2., as it is presently codified. We note at the outset that there is a problem with the current language of §59.3.3.2.C.2.c. because it requires that a combined Independent Living Facility for Seniors or Persons with Disabilities must comply with "*all limited use standards*" in §59.3.3.2.C.2, even though some of the limited use standards in §59.3.3.2.C.2.a. are inconsistent with the limited use standards in §59.3.3.2.C.2.b., and *vice versa*. For example, §59.3.3.2.C.2.a.iii. restricts occupancy to "a senior adult" and others to assist that person, while §59.3.3.2.C.2.b.iii. restricts occupancy to "a person with disabilities" and others to assist that person. One cannot simultaneously comply with both those restrictions, unless the resident is both a senior person and a disabled person. The Hearing Examiner will proceed to interpret the section in manner that will carry out the apparent intent of the Council. *Trembow v. Schonfeld*, 393 Md. 327, 336-337, 901 A.2d 825, 831 (2006). That apparent intent would apply the limited use standards for seniors to those portions of the facility occupied by seniors, and the limited use standards for those with disabilities to those portions of the building occupied by individuals with disabilities.

The Hearing Examiner pointed out the issue of the statutory ambiguity to the Applicant at the hearing (Tr. 11-13) and put a one page memorandum in the record noting the need for a clarification and an additional technical correction to the provision (Exhibit 50). The Applicant

responded that, at least initially, the building would be occupied only by seniors, but it wished to have the flexibility to have disabled residents in the future. (Tr. 11-13, 21). Since §59.3.3.2.C.2.c. requires compliance with the Limited Use standards of §§59.3.3.2.C.2.a. and b., we begin there.

2. Use Standards

a. Where an Independent Living Facility for Seniors is allowed as a limited use, it must satisfy the following standards:

i. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.

Conclusion: Technical Staff indicates that the Applicant has acknowledged this requirement and will meet it (Exhibit 47(a), p. 1). Nevertheless, the Hearing Examiner has imposed this provision as a condition in Part IV of this Report and Decision, so that it is clear that the conditional use holder is required to follow any applicable Federal, State, and County licensure, certificate, and regulatory requirements. Therefore, the Hearing Examiner finds that this provision has been satisfied.

ii. Resident staff necessary for the operation of the facility are allowed to live on-site.

Conclusion: The Applicant has provided testimony that there will be no need for resident staff and that there is no plan to have resident staff on site (Tr. 36-37). Nevertheless, having resident staff is not prohibited by this conditional use, as long as the number of employees does not exceed four (except for emergencies and occasional special events), should the operator of the facility find it necessary to have a resident employee. Therefore, the Hearing Examiner finds that this provision has been satisfied.

iii. Occupancy of a dwelling unit is restricted to the following:

(a) a senior adult, as defined in Section 1.4.2, Defined Terms;

(b) other members of the household of a senior adult, regardless of age;

(c) a resident care-giver, if needed to assist a senior resident; or

(d) a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist seniors as defined in that program.

(e) If imposing age restrictions that would limit occupancy otherwise allowed by this Subsection, the facility must only impose age restrictions that satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, as amended, or the state Fair Housing Act, Subtitle 7 of Title 20 of the Annotated Code of Maryland, State Government Article, as amended.

Conclusion: In response to this provision Technical Staff stated (Exhibit 47(a), p. 2):

Acknowledged by the Applicant. The Applicant indicates that all occupants of the units will be at least 62 years of age, which meets the definition of a senior adult as defined in the zoning ordinance and as allowed by exemption under the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, as amended, or the state Fair Housing Act, Subtitle 7 of Title 20 of the Annotated Code of Maryland, State Government Article. Additionally, the Applicant indicates that at this time there will be no resident care-givers as the proposed project is an independent living facility, not an assisted living facility. Other occupants may reside with the senior adult, regardless of age, as legally permitted. This finding is satisfied.

The Hearing Examiner has imposed a condition in Part IV of this Report and Decision requiring that "Occupancy of the dwelling units shall be in accordance with the applicable Limited Use standards of Zoning Ordinance Sections 59.3.3.2.C.2.a. and b." This condition is worded in this fashion because occupancy requirements vary according to whether the occupants are seniors (as governed by the Limited Use standards of Section 59.3.3.2.C.2.a.) or persons with disabilities (as governed by the Limited Use standards of Section 59.3.3.2.C.2.b.). As mentioned previously, the Applicant has indicated that, at least initially, the building would be occupied only by seniors, but it wished to have the flexibility to have disabled residents in the future. (Tr. 11-13, 21). The Hearing Examiner's condition will cover either eventuality. As conditioned, the Hearing Examiner finds that this standard has been met.

b. Where an Independent Living Facility for Persons with Disabilities is allowed as a limited use, it must satisfy the following standards:

i. The facility must meet all applicable federal, state, and County licensure, certificate, and regulatory requirements.

Conclusion: In response to this provision Technical Staff stated (Exhibit 47(a), p. 2):

Acknowledged by the Applicant. The Applicant has indicated the proposed facility is intended for seniors. However, the Applicant does not preclude that some residents in the future may qualify as a person with disabilities. In the event that qualified persons with disabilities are occupants of the facility, the Applicant will comply with all applicable federal, state, and County licensure, certificate, and regulatory requirements for persons with disabilities. This finding is satisfied.

As mentioned in response to §59.3.3.2.C.2.a.i., the Hearing Examiner has imposed this provision as a condition in Part IV of this Report and Decision, so that it is clear that the conditional use holder is required to follow any applicable Federal, State, and County licensure, certificate, and regulatory requirements. Therefore, the Hearing Examiner finds that this provision has been satisfied.

ii. Resident staff necessary for the operation of the facility are allowed to live on-site.

Conclusion: As mentioned in response to §59.3.3.2.C.2.a.ii., the Applicant has provided testimony that there will be no need for resident staff and that there is no plan to have resident staff on site (Tr. 36-37). Nevertheless, having resident staff is not prohibited by this conditional use, as long as the number of employees does not exceed four (except for emergencies and occasional special events), should the operator of the facility find it necessary to have a resident employee. Therefore, the Hearing Examiner finds that this provision has been satisfied.

iii. Occupancy of a dwelling unit is restricted to the following:

- (a) a person with disabilities, as defined in Section 1.4.2, Defined Terms;***
- (b) other members of the household of a person with a disability, regardless of age;***
- (c) a resident caregiver, if needed to assist a resident with a disability; or***
- (d) a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist persons with disabilities as defined in that program.***

Conclusion: In response to this provision Technical Staff stated (Exhibit 47(a), p. 3):

Acknowledged by the Applicant. The Applicant indicates that the proposed facility is for seniors. However, in the event that an occupant is not a senior but a person with disabilities, the Applicant indicates that such persons will meet the definition

of a person with disabilities as defined in the zoning ordinance and that members of the household may reside with the qualified occupant. Further, the Applicant acknowledges that a resident caregiver may occupy a dwelling unit to assist a resident with a disability, as may also a person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist persons with disabilities as defined in that program. This finding is satisfied.

As mentioned in response to §59.3.3.2.C.2.a.iii., the Hearing Examiner has imposed a condition in Part IV of this Report and Decision requiring that “Occupancy of the dwelling units shall be in accordance with the applicable Limited Use standards of Zoning Ordinance Sections 59.3.3.2.C.2.a. and b.” This condition is worded in this fashion because occupancy requirements vary according to whether the occupants are seniors (as governed by the Limited Use standards of Section 59.3.3.2.C.2.a.) or persons with disabilities (as governed by the Limited Use standards of Section 59.3.3.2.C.2.b.). As noted previously, the Applicant has indicated that, at least initially, the building would be occupied only by seniors, but it wished to have the flexibility to have disabled residents in the future. (Tr. 11-13, 21). The Hearing Examiner’s condition will cover either eventuality. As conditioned, the Hearing Examiner finds that this standard has been met.

c. Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:

i. The site or the proposed facility has adequate accessibility to or provides on-site public transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities. The application must include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility.

Conclusion: The record does include a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility. Exhibit 59(a). Technical Staff indicated that the vicinity map is “accurate and acceptable” (Exhibit 60).

In addition, the Applicant's Statement of Justification (Exhibit 8, pp. 4-5) details a number of nearby services and activities that will be available to residents of the proposed facility:

The subject property is located approximately one mile south of downtown Damascus and the Main Street shopping area which is located at the intersection of Ridge Road and Main Street. The businesses in downtown Damascus offer shopping, services and cultural activities. In and around the downtown area are restaurants, multiple pharmacies and grocery stores, salons, and the Damascus Community Recreation Center, which offers a wide range of activities including sports, fitness, dance, music and art as well as space to hold gatherings and celebrations. The unincorporated town of Damascus provides many of the services and amenities desired by independent elderly seniors.

* * *

Holy Cross Germantown Hospital (<http://www.holycrosshealth.org/hcgh>) is located about 7 miles south of St. Anne's in Germantown and offers a full service hospital including emergency care, surgeries, imaging, dialysis and rehabilitation services. The Holy Cross Hospital system offers a full range of in-patient, out-patient and community-based health care services, with specialized expertise in senior services, surgery, neuroscience and cancer.

Other medical facilities are located in the Damascus area as well. Such options include a wellness center, a family medicine office, a chiropractic facility and a testing lab center.

The Applicant further described its in-house amenities and services in its Statement of Justification (Exhibit 8, p. 9):

Staff will typically be present on weekdays between the hours of 9 a.m. and 5 p.m. and in the evenings and on weekends if special events are planned. Staff will consist of a property manager, a maintenance technician, a porter and an additional person who, with the property manager, will be responsible for coordination with residents and their needs. The maximum weekday staff on-site at any one time will be three (3). The maximum weekend staff at any one time would be one person unless there is a special event scheduled.

Specialists or persons with areas of expertise of interest for seniors may visit the facility to conduct programs for the benefit of the residents, such as bridge lessons, educational or travel presentations or wellness classes for seniors. Additionally, the Petitioner hopes to involve the residents of the seniors building in the activities offered for and by the adjacent church, and vice versa.

Community areas within the proposed building that are available to all residents will include a lobby, community room, sitting room, library, wellness suite, fitness room, cyber café and property management office suite.

Christopher Everett, the Applicant's expert in developing and operating affordable senior housing, testified that (Tr. 39),

. . . with these type of facilities we really try to go in with some of the amenities to provide a really nice lifestyle. So there will be a pretty nice community center, wellness, cyber lounge that we design, access to outside, a very nice patio. So we really try to amenitize these even though it is affordable because this project will be for the next 20, 30 years. So we want our residents to be happy. So I think that's part one. Part two is that we do work with a resident coordinator⁷ that will come in and work with third-party vendors to bring in additional activities and coordinate things for the residents. You know, holiday parties throughout the years - throughout the year. And just to fill up the calendar and make it a very active, engaged community.

Technical Staff found that the Applicant's program will satisfy the statutory standard (Exhibit 45, p. 23), and recommended a condition to ensure the availability of transportation to needed services. The Hearing Examiner added to that condition to require that the conditional use be operated so as to provide the services outlined by the Applicant in its submissions. The modified condition reads:

The conditional use must be operated in a manner so as to provide the facilities and services to residents outlined in Applicant's Statement of Justification (Exhibit 8, p. 9). The Applicant and any successors in interest must also provide reasonable transportation to medical services, shopping areas, recreation and other community services desired by resident senior adults and persons with disabilities, as required by Zoning Ordinance Section 59.3.3.2.C.2.c.i.

The Hearing Examiner finds that, as conditioned, the proposed facility has adequate accessibility to the listed transportation, medical service, shopping areas, recreation and other community services frequently desired by senior adults or persons with disabilities.

ii. The Hearing Examiner may restrict the availability of ancillary services to nonresidents and specify the manner in which this is publicized. Retail facilities may be included for the exclusive use of the residents of the building.

Conclusion: The Applicant specified in its Statement of Justification (Exhibit 8, p. 18) that "No

⁷ The "resident coordinator" is not a resident staff member, but rather roams around to similar facilities. Tr. 39.

retail services for the public or residents are proposed to be located in the seniors facility.” Given the Applicant’s statement, Technical Staff found that this provision is inapplicable (Exhibit 45, p. 24). The Hearing Examiner finds that there is no reason in this record to impose the additional restriction authorized by this provision, and therefore will not do so.

iii. A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.

Conclusion: Christopher Everett, the Applicant’s expert in developing and operating affordable senior housing, testified that the Applicant will more than meet the minimum requirement of permanently reserving 20% of the dwelling units for households of low income, and in fact, may even approach 80 percent at that income level. Tr. 49. “Low Income” is defined by the Zoning Ordinance as “At or below 60% of the area median income (as determined annually by the U.S. Department of Housing and Urban Development), adjusted for household size.”

Technical Staff recommended a condition requiring compliance with the requirements of Section 59.3.3.2.C.2.c.iii, and the Hearing Examiner has imposed a substantially similar condition in Part IV of this Report and Decision. Thus, this provision has been satisfied.

iv. The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is 60 feet and the maximum density is determined by the Hearing Examiner under the development standards of Section 3.3.2.C.2.b.vi through Section 3.3.2.C.2.b.ix, without regard to any other limitation in this Chapter.⁸

⁸ Zoning Ordinance §59.3.3.2.C.2.c. contains an erroneous reference in Zoning Ordinance Subsection 59.3.3.2.C.2.c.iv. to “Section 3.3.2.C.2.b.vi through Section 3.3.2.C.2.b.ix.” Those subsections were renumbered as Section 3.3.2.C.2.c.vi through Section 3.3.2.C.2.c.ix when the Zoning Ordinance was amended in ZTA 16-15, adopted 2/7/17 in Ord. No 18-24, eff. 2/27/17, and they are no longer part of Section 3.3.2.C.2.b.

Conclusion: The height of the proposed building is a maximum of 45 feet in the Conditional Use Site Plan (Exhibit 41(a)). It therefore complies with the height limitation in this provision. Based on the development standards set forth in Section 3.3.2.C.2.c.vi through Section 3.3.2.C.2.c.ix., the Hearing Examiner finds that the Applicant's proposed density of 23 dwelling units per acre (76 units on 3.44 acres, which results in a density of just over 22 dwelling units per acre) would be compatible with the surrounding uses, for the reasons discussed in response to the next section. Thus, the Hearing Examiner sets a maximum density of 23 dwelling units per acre for the subject site and finds that the requirements of this provision have been satisfied.

v. Height, density, coverage, and parking must be compatible with surrounding uses and the Hearing Examiner may modify height, density, coverage, and parking to maximize the compatibility of buildings with the residential character of the surrounding neighborhood.

Conclusion: Technical Staff reports (Exhibit 45, p. 24):

This standard is satisfied. While the footprint, massing and building height are not typical of the surrounding neighborhood, the existing site conditions, topography, landscaping, and placement of the building maximize the compatibility of the building with the surrounding area.

The Hearing Examiner agrees with this assessment. As discussed in Part III.A. of this Report and Decision, the proposed building will be compatible with its surroundings, given the way it is located, designed and screened. The neighborhood consists of the existing church, suburban residential homes, townhouses and vacant school district property. Clearly, the proposed use will be compatible with the adjacent church which owns the property, and being residential in character and well screened, the proposed use will exist in harmony with other residential areas in the vicinity.

The Applicant's architect, John Kershner, indicated that even though the proposed building has architecture different from nearby single-family homes, it will be compatible with

the neighborhood in the sense that it will have minimal impact on those single-family residences because of distance and screening. Tr. 105.

Technical Staff agreed (Exhibit 45, p. 20):

. . . There is a variety of building scales, forms, and design details exhibited in the neighborhood. The existing church architecture is modern and is representative of 1962 institutional designs of this type. The architecture of the Project is contemporary in design and form. The visual character of the neighborhood is mixed with detached dwelling, townhomes and institutional uses, such [as] a church and school buildings. Therefore, the proposed residential building is not out of character and is compatible with the surrounding residential neighborhoods.

Based on this record, the Hearing Examiner finds that the proposed use, an Independent Living Facility for Seniors or Persons with Disabilities, designed as it is with a well-screened multi-unit residential style architecture in an area with mixed uses, will be compatible with the character of the surrounding neighborhood. The proposed height, density, coverage and green area of the site will all be consistent with the development standards established in Section 3.3.2.C.2.c.vi through Section 3.3.2.C.2.c.ix of the Zoning Ordinance, as discussed above in Part III.B. of this Report and Decision.

The Hearing Examiner also finds that the proposed parking will be compatible with the neighborhood. As discussed in Part III.D.2., below, the grant of a parking lot setback waiver and a Joint Parking Agreement with the adjoining church property (Exhibit 42) ensure that the impacts of the additional parking on the site will not differ significantly from the existing parking on the property and will not unduly burden the neighborhood.

vi. The minimum front setback is 50 feet. Except for an access driveway, this setback area must be maintained as green area; however, if development does not exceed the height limit of the applicable Residential zone, the minimum setback specified by the zone applies.

Conclusion: Technical Staff reports that “. . . no structure is located within 50 ft. of the front setback.” Exhibit 45, p. 24. Under the language of this subsection, the minimum front setback

would be 40 feet because that is the prescribed R-200 Zone front setback per §59.4.4.7.B, and the proposed height of the development (45 feet) does not exceed the height limit of the R-200 Zone (50 feet). Nevertheless, the proposed front setback is 73 feet, and all of it appears to be green area, so the minimum front setback will be met under either the 40-foot R-200 specification or the 50-foot specification in this section. Thus, the Hearing Examiner finds that the requirements of this provision have been satisfied.

vii. The minimum side and rear setback is 25 feet or as specified by the relevant zone, whichever is greater.

Conclusion: As reflected in the table on page 38 of this Report and Decision, the side setback specified in §59.4.4.7.B, for the R-200 Zone (12 feet) is less than the 25 feet specified in this section, so the minimum side setback is the greater figure of 25 feet. The rear setback specified in §59.4.4.7.B, for the R-200 Zone is 30 feet, which is greater than the 25-foot setback specified in this section, so the minimum rear setback is the greater figure of 30 feet.

Based on the Applicant's Conditional Use Site Plan (Exhibit 41(a)), the side and rear setbacks of the proposed facility exceed these minimum setbacks, and the Hearing Examiner therefore finds that this provision has been satisfied.

viii. The minimum green area is:

- (a) 70% in the RE-2, RE-2C, and RE-1 zone, except where the minimum green area requirement is established in a master plan;***
- (b) 60% in the R-200 zone; and***
- (c) 50% in the R-60, R-90, and Residential Townhouse zones.***

Conclusion: The Applicant's Conditional Use Site Plan (Exhibit 41(a)) provides for 75% green area, which exceeds the 60% minimum specified in this section for the R-200 Zone. Technical Staff found that this standard had been satisfied (Exhibit 45, p. 25), and the Hearing Examiner agrees that the proposed 75% green area satisfies the 60% minimum required by this provision for the R-200 Zone.

ix. The Hearing Examiner may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.

Conclusion: No reduction in green area has been requested by the Applicant, and none is needed or granted by the Hearing Examiner.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Under the amendments to Section 59.7.3.1.E.1.b. of the 2014 Zoning Ordinance, effective December 21, 2015, the requirements of these sections need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.”⁹ The applicable requirements, and whether the use meets these requirements, are discussed below. Technical Staff’s report (Exhibit 45, pp. 4-5, 9-11 and 14-15) discusses matters relating to the following Divisions of Article 59.6: Division 6.1 Access; Division 6.2 Parking, Queuing and Loading; Division 6.4 General Landscaping and Outdoor Lighting; Division 6.5 Screening; and Division 6.7 Signs. The proposed use and Zone do not require the review of Division 6.1 for Site Access, Division 6.3 for Open Space and Recreation, or Division 6.6 for Outdoor Storage. Nevertheless, the Hearing Examiner will briefly address the proposed site access below.

1. Site Access

Section 6.1.2. Applicability

Division 6.1 applies to development in the Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones if:

- A. an apartment, multi use, or general building type is proposed; and***
- B. a site plan or conditional use approval is required.***

Conclusion: Zoning Ordinance Division 59.6.1. governs Site Access; however, by its own terms, as stated in §59.6.1.2., Division 59.6.1 does not apply to development in single-family residential zones, such as the R-200 Zone involved in this case, even if a multi-unit building is planned.

⁹ The 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), was amended effective December 25, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

As noted by Technical Staff (Exhibit 45, p. 9), currently “Vehicular ingress and egress are from Ridge Road via a 25 foot wide driveway.” According to Kenneth Jones, Applicant’s engineer, the same driveway will be extended to access the proposed new building. Mr. Jones testified that the same entrance is being used because the severe grade change requires a driveway that snakes around to get up to the level of the church and the proposed new building. Tr. 64-65. Adequate bicycle and pedestrian access and circulation will be evaluated at Preliminary Plan, and the Applicant has agreed to conditions recommended by the Technical Staff addressing those needs. Tr. 10. The Hearing Examiner has adopted those conditions in Part IV of this Report and Decision.

Based on this record, the Hearing Examiner finds, subject to revisions at subdivision, that site access will be adequate.

2. Parking Spaces, Parking Setback Waivers and Parking Lot Screening

Parking, queuing and loading standards are governed by Division 6.2 of the Zoning Ordinance. We turn first to the number of required parking spaces:

a. Number of Parking Spaces Required by Sections 59.6.2.3 and .4

For an Independent Living Facility for Seniors or Persons with Disabilities, the required number of vehicle parking spaces is based on the number of dwelling units and the maximum number of employees on a shift. The chart in Zoning Ordinance §59.6.2.4.B. calls for 1 parking space for each dwelling unit plus 0.5 spaces for each employee. Since there will be 76 dwelling units and up to 4 employees, the number of required vehicle parking spaces, without any adjustment, would be 78 (76 + 2). However, Zoning Ordinance §59.6.2.3.I.2.b allows an adjustment factor of 0.5 for senior housing, bringing the total number of required spaces down to 39 for the new facility. Technical Staff agreed with this adjustment, as shown in the Development Standards Table in its Report (Exhibit 45, p. 11). The relevant portion of that Table is shown below:

Portion of Development Standards Table Addressing Parking Spaces and Loading

Parking Requirements (59-6.2.4) 1.0 spaces per unit, 0.5 spaces per employee. Reduced by 0.5 per senior housing adjustment	39 spaces total* Accessible: 2 Bicycle: 19	34 spaces provided** Accessible: 3 (including 1 van sp.) Bicycle: 20
Off-Street Loading (Sec. 59-6.2.8.B.1)	1 space per 50 units and above	1 space

*Parking adjustment factor applied (0.5 reduction for senior housing per 59.6.2.3.I.2.b)

**Joint shared use parking agreement for parking provides 5 of the required 39 spaces total.

The Applicant will provide 34 vehicle parking spaces (including 3 handicapped spaces) on subject site (Proposed Lot 2) and 20 long term bicycle spaces. The additional 5 required vehicle parking spaces will be provided on the adjoining site (Lot 1) occupied by the Church which owns both properties, in accordance with a Joint Parking Agreement (Exhibit 42). Such an “Off-Site Parking Agreement” is expressly permitted by Zoning Ordinance §59.6.2.3.G.¹⁰ Reverend Lee Davis, whose Church owns the property, testified that he did not anticipate and problem with the sharing arrangement for parking. Tr. 23-25. Since the Church site (Lot 1) requires only 68 parking spaces, but will have 80 spaces, the Hearing Examiner finds that it can easily support having 5 of its spaces used by the abutting conditional use on Lot 2.

A condition recommended by Technical Staff and largely adopted by the Hearing Examiner in Part IV of this Report and Decision, will require the parties to the Joint Parking Agreement to execute that document, record it among the Land Records of Montgomery County and provide a copy of the executed and recorded Joint Parking Agreement to the Planning Department and to the Office of Zoning and Administrative Hearings for inclusion in the record

¹⁰ The Applicant’s letter to the Hearing Examiner of November 5, 2018 (Exhibit 41) requests a waiver of the vehicle parking space requirement to allow the 5-space shortfall on proposed Lot 2 to be made up on the abutting parking lot through the Joint Parking Agreement. In the opinion of the Hearing Examiner, a parking space waiver, per Zoning Ordinance §59.6.2.10, is not needed since §59.6.2.3.G. permits the needed parking to be provided by an Off-Site Parking Agreement as proposed by the Applicant. In other words, the parking space requirement is not being waived, but rather is being supplied off site. If a parking waiver were required for the 5-space shortfall on Lot 2, the Hearing Examiner would have granted it.

of the conditional use application.¹¹

Zoning Ordinance §59.6.2.4.C. requires a number of bicycle parking spaces at least equal to .25 of the number of dwelling units, which amounts to a requirement for 19 bicycle spaces (.25 X 76 = 19). The Applicant will provide 20 long-term bicycle parking spaces.

As shown in the above Table, the Applicant will also provide one off-street loading space, consistent with the requirements of Zoning Ordinance §59. 6.2.8.B.1.

Conclusion: In sum, the Hearing Examiner finds that the proposed conditional use will meet all the Zoning Ordinance requirements for the number of parking and loading spaces.

b. Parking Setbacks, Screening and Landscaping

In addition to setting standards for the number of parking spaces required, the Zoning Ordinance also prescribes minimum setbacks for parking facilities. Section 59.6.5.k.2.a. calls for a minimum rear parking setback equal to the minimum rear setback required for a detached house, and Section 59.6.5.k.2.b. calls for a minimum side parking setback equal to 2 times the minimum side setback required for a detached house.

In the R-200 Zone, Zoning Ordinance §59.4.4.7.B requires a rear setback for a detached house of 30 feet and a side setback of 12 feet. As shown in the following portion of Technical Staff's Development Standards Table (Exhibit 45, p. 11), the Applicant's proposal easily meets the 30-foot rear setback with a parking facility rear setback of 150 feet. However, the Applicant's proposal has a 0-foot side setback for the parking facility, which clearly does not meet the side parking facility setback requirement of 24 feet (twice the 12-foot dwelling side setback).

¹¹ Technical Staff's proposed language for this Condition would have required that the text of the agreement be "acceptable to the staff of the M-NCPPC." Such a condition would arguably violate the dictates of Parts II & III of the Court of Special Appeals decision in *Concerned Citizens v. Constellation-Potomac, L.L.C.*, 122 Md. App. 700, 716 A.2d 353 (1998). In the *Constellation-Potomac* case, the court opined that the Board of Appeals may not grant a special exception with a condition requiring a post-record submission of an item necessary to satisfy the statutory requirements for the special exception. This issue differs from the post-Conditional Use approval of a Preliminary Plan by the Planning Board because the Zoning Ordinance specifically calls for the Planning Board to decide on issues relating to the adequacy of public facilities after the Conditional Use decision, when the proposed use requires subdivision. Zoning Ordinance §59.7.3.1.E.1.f.ii.

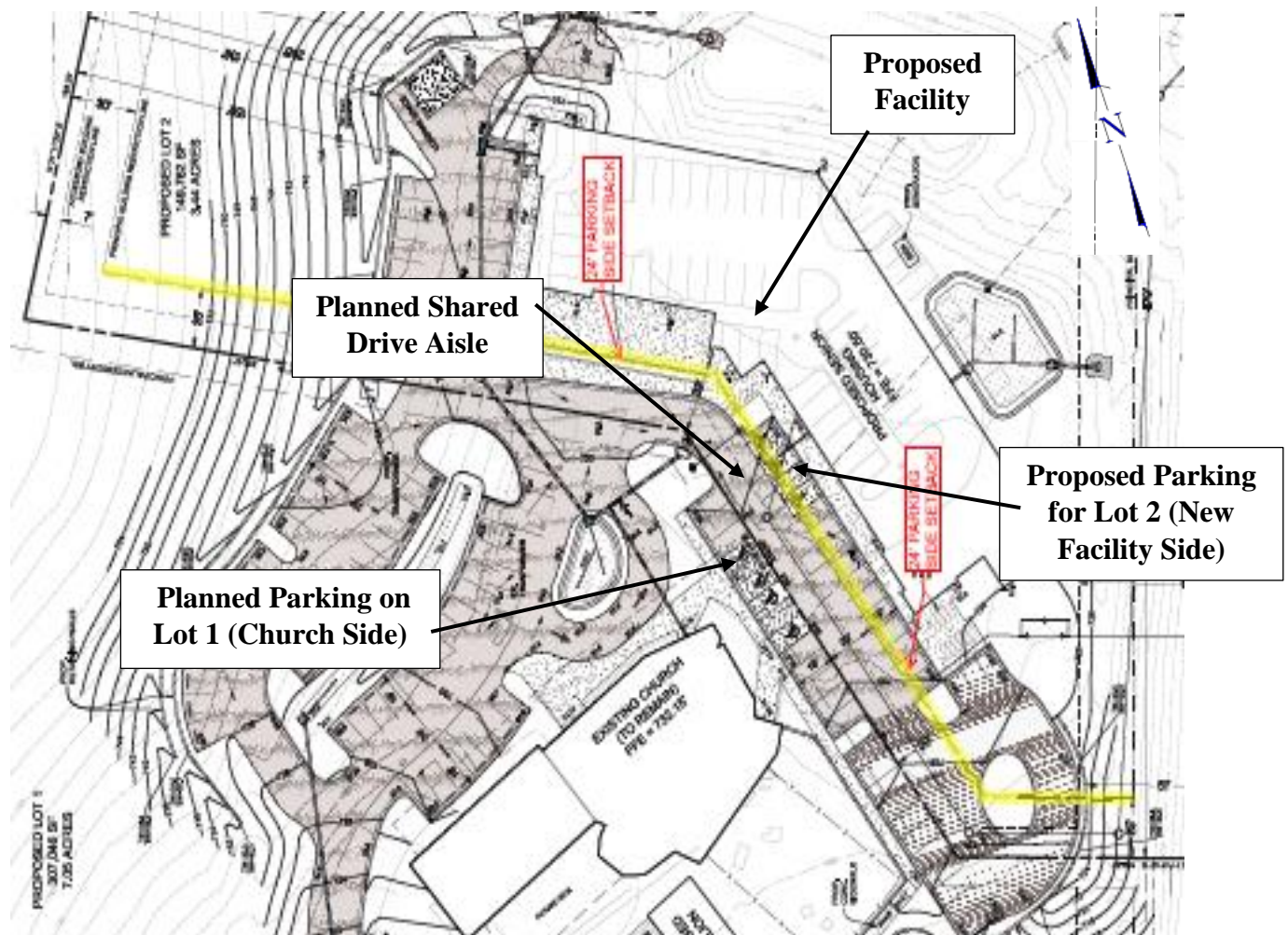
Portion of Development Standards Table Addressing Parking Facility Setbacks

Minimum Parking Setback		
Rear	30 ft.	150 ft.
Side	24 ft.	0 ft. *

*A parking setback waiver has been sought and is discussed below.

To remedy this situation, the Applicant has requested a waiver of the parking facility side setback requirement, per Zoning Ordinance §59.6.2.10. As stated by the Applicant, “A waiver of the entire twenty-four foot setback is requested because parking spaces on Lot 2 . . . [abut] a drive lane at least 20 feet wide [on Lot 1] that also serves parking and church facilities on adjacent Lot 1.” Exhibit 41, p. 2.

A number of factors come into play in evaluating the Applicant’s request for a parking facility setback waiver. It is helpful in this regard to examine a diagram provided by the Applicant to demonstrate the parking setback waiver request (Exhibit 41(h)):



Conclusion: Zoning Ordinance §59.6.2.10 provides that “*The deciding body may waive any requirement of Division 6.2, . . . if the alternative design satisfies Section 6.2.1. . . .*” Section 6.2.1 provides that “*The intent of the vehicle and bicycle parking, queuing, and loading requirements is to ensure that adequate parking is provided in a safe and efficient manner.*”

The most salient fact regarding the setback issue is that the parking lot setback in question will adjoin a drive aisle separating two shared parking facilities, and therefore reducing the setback will not adversely affect the adequacy, safety or efficiency of the parking; nor will it be detrimental to the residential character and pedestrian friendly environment of the neighborhood. Based on this record, the Hearing Examiner hereby grants the requested parking lot setback waiver of Section 59.6.2.5.K.2.b., reducing the minimum side yard setback for the parking facility along the southern lot line of Lot 2 to 0 feet, instead of 24 feet, in accordance with Zoning Ordinance §59.6.2.10.

In addition to setback requirements for parking facilities, Zoning Ordinance §59.6.2.9.C. specifies required screening and landscaping for parking lots with 10 or more spaces. The Applicant’s landscape plans (Exhibits 41(c), (d) and (e)) are substantially reproduced in Part II.C.2. of this Report and Decision. Technical Staff reports that the Applicant’s plans meet or exceed all these requirements (Exhibit 45, p. 15):

The Project’s parking lot landscaped areas, tree canopy and perimeter plantings meet or exceeds the required landscaping as required by Sec. 6.2.9.C as shown on the Applicant’s landscape plan. Additionally, the Applicant provides additional interior landscaping around the building and patio area consisting of shrubs, trees, groundcover, and other deciduous and perennial plantings. This standard is satisfied.

There is no evidence in this record contradicting Staff’s findings in this regard.

Conclusion: Based the Applicant’s Landscape Plans and Technical Staff’s findings, the Hearing Examiner finds that the Applicant’s plans satisfy the parking lot landscaping and screening requirements of Zoning Ordinance §59.6.2.9.C.

3. Site Landscaping and Screening

Conclusion: Division 6.4 of the Zoning Ordinance sets minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” Section 59.6.4.1. Section 59.6.5.3.A.1. provides that “*Screening is required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.*” Section 59.6.5.3.C. describes specific landscaping and screening required for different building types, and Section 59.6.8 allows approval of an alternative method of compliance with these requirements if there are unique site or use characteristics or development constraints, and certain criteria are met.

Technical Staff found that “the Project complies with Sec. 59-6.8.1 Alternative Method of Compliance with regard to Sec. 59-6.5.3.C (Screening Requirements by Building Type).” Exhibit 45, p. 15. As explained by Staff (Exhibit 45, pp. 14-15):

The Project is adequately screened from the adjoining residential lots by existing forest, landscaped trees, and reforestation plantings as shown on the landscape plan [Exhibits 41(c), (d) and (e)]. A mature screening of spruce trees is situated near the west property line. Approximately two acres of forest is located in the upper northwest corner of the Property, as well as approximately 0.43 of forest abutting Ridge Road in the southwest corner of the site. About 0.32 acres of trees and landscape on the slope along Ridge Road provide additional screening from off-site views. Additionally, the Project’s visibility is adequately screened by existing site topography from off-site view to the west. The site’s unique characteristics containing steep slopes and forested land precludes the requirements additional property boundary screening.

The Applicant’s architect, John Kershner, testified that the site’s positioning, distance from adjacent housing and screening would render the proposed use compatible with the neighborhood. Tr. 105. The Hearing Examiner therefore accepts Staff’s assessment and finds that the proposed use meets the landscaping and screening criteria required by Division 59-6.5 of the Zoning Ordinance, to the extent necessary to ensure compatibility, which is the standard set forth in Zoning Ordinance §59.7.3.1.e.1.b. for the Hearing Examiner’s review of compliance with Article 59-6.

4. Outdoor Lighting

Conclusion: The outdoor lighting proposed for the conditional use was discussed in Part II.C.2.

of this Report and Decision. As indicated there, permissible lighting levels for a conditional use are specified in Zoning Ordinance §59.6.4.4.E., which provides,

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

The proposed fixtures must also meet the design requirements specified in Zoning Ordinance §59.6.4.4.B.

Technical Staff's review of the lighting levels found that the grounds will be adequately lit and that the lighting will not intrude across the property lines (Exhibit 45, p. 15):

Pole mounted light fixtures, wall fixtures, and recessed light canisters are proposed as shown on the Applicant's lighting plan and schedule. All lights are LED fixtures with full cut-off to eliminate horizontal light cast. The photometric plan predicts that no light above 0.0 foot-candles will spill across any Property boundary of the existing property lines and adjoining residences. The lighting plan is adequate, providing visibility to the areas for vehicular and pedestrian circulation during nighttime hours. The lighting will not have a negative impact to neighboring property owners with either direct light or light glare. As such, the lighting plan satisfies the requirements of Sec. 6.4.4. This standard is satisfied.

The Hearing Examiner's own inspection of the photometric plan reproduced in Part II.C.2 of this Report and Decision demonstrates that the lighting from the subject site will not exceed the statutory standard of 0.1 foot-candles along any lot line abutting a lot with a detached house. The only foot-candle readings exceeding that level are along the shared entry aisle and parking areas abutting that drive aisle. Such lighting in those locations is necessary for safety.

There is no evidence in this record to refute Applicant's photometric study and Technical Staff's findings. Therefore, the Hearing Examiner finds that the proposed lighting for the

conditional use will meet the Zoning Ordinance standards and will not cause undue harm to neighboring properties due to illumination.

5. Signage

Permitted signage for residential zones is set forth in Zoning Ordinance §59.6.7.8.

Additional signage area is allowed for subdivisions and multiunit developments, as specified in Zoning Ordinance §59.6.7.8.B.1.

Technical Staff indicates that “No signs are proposed at this time for the conditional use.” Exhibit 45, p. 15. However, the Applicant states the following in its Statement of Justification (Exhibit 8, p. 8):

A ground mounted site sign will be located at the entrance driveway. As this is a residential zone, only a two (2) square foot sign is permitted. Ridge Road is a very high-traffic corridor. In order to catch the attention and to notify passing travelers of the location of the facility, a larger freestanding sign will be necessary than what is permitted in residential zones. Once a design and dimensions are determined, a sign variance will be applied for with the Montgomery County Sign Review Board, and details of the sign will be submitted as a supplement to this application.

The Hearing Examiner raised this issue at the hearing, and suggested that he would impose a condition addressing the sign issue. The Applicant agreed to having such a condition. Tr. 115-116.

Conclusion: In anticipation of Applicant’s future sign proposal, the Hearing Examiner has imposed the following condition in Part IV of this Report and Decision:

If the Applicant seeks to install an exterior sign, it must first obtain a sign permit from the Department of Permitting Services for any proposed sign, and must file a copy of any such sign permit with OZAH and amended plans showing the sign’s location and details. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board.

Given that condition, the Hearing Examiner finds that any sign posted by the Applicant will be compliant with the Zoning Ordinance, or be allowed pursuant to a sign variance and permit.

IV. Conclusion and Decision

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of St. Anne's Episcopal Community Development Corporation (CU 18-11) for a conditional use under Section 59.3.3.2.C.2.c. of the Zoning Ordinance to build and operate an Independent Living Facility for Seniors or Persons with Disabilities, at 25100 Ridge Road (Route 27) in Damascus, Maryland, is hereby **GRANTED**, subject to the following conditions:

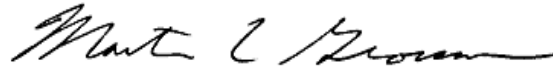
1. Physical improvements to the Subject Property are limited to those shown on the Applicant's Conditional Use Site Plan, Landscaping Plan, Lighting Plan and all other plans approved in this Report and Decision, subject to any revisions required by the Planning Board at Subdivision. The Applicant must file copies with OZAH of any plans modified at Subdivision.
2. The maximum number of dwelling units is limited to 76 units on 3.44 acres, and the density of the development is therefore limited to a maximum of 23 dwelling units per acre. Occupancy of the dwelling units shall be in accordance with the applicable Limited Use standards of Zoning Ordinance Sections 59.3.3.2.C.2.a. and b.
3. The maximum number of weekday employees is limited to four (4) persons during normal business hours. Weekend staff is limited to one (1) person. Additional staff may be permitted for emergencies and occasional special events.
4. The conditional use must be operated in a manner so as to provide the facilities and services to residents outlined in Applicant's Statement of Justification (Exhibit 8, p. 9). The Applicant and any successors in interest must also provide reasonable transportation to medical services, shopping areas, recreation and other community services desired by resident senior adults and persons with disabilities, as required by Zoning Ordinance Section 59.3.3.2.C.2.c.i.
5. The collection of solid waste refuse and recyclable materials must occur on a weekday and not on Saturday or Sunday.
6. The Applicant and any successors in interest must comply with the requirement of Zoning Ordinance Section 59.3.3.2.C.2.c.iii, that a minimum of 15 percent of the dwelling units are permanently reserved for households of very low income, or 20 percent for households of

low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs.

7. Prior to the issuance of any building permit for the subject conditional use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code.
8. Prior to the approval of a Preliminary Plan of Subdivision, the Applicant must demonstrate compliance with the Bicycle Master Plan recommendations, including the recommended shared-use side-path along the west side of Ridge Road (MD 27) along the frontage of the subject property, or an alternative method of compliance acceptable to the Planning Board.
9. Prior to the approval of a Preliminary Plan of Subdivision, the Applicant must demonstrate an adequate pedestrian circulation plan that is appropriate for the subdivision, given its location and the type of proposed development and use, as provided in Montgomery County Code Section 50-4.2.D.1.
10. Prior to the approval of a Preliminary Plan of Subdivision, the parties to the Joint Parking Agreement (Exhibit 42) must execute that document, record it among the Land Records of Montgomery County and provide a copy of the executed and recorded Joint Parking Agreement to the Planning Department and to the Office of Zoning and Administrative Hearings for inclusion in the record of the conditional use application.
11. A Parking Facility Setback Waiver is hereby granted, pursuant to Zoning Ordinance §59.6.2.10, reducing the side setback required by Zoning Ordinance §59.6.2.5.K 2.b. from 24 feet to 0 feet, as shown on the Applicant's Conditional Use Site Plan.
12. Prior to the approval of the Preliminary Plan of Subdivision application, the Applicant must obtain approval of the stormwater management concept plan from the Montgomery County Department of Permitting Services.
13. As part of the approval of a Preliminary Plan of Subdivision application, the Applicant must obtain an approval from the Planning Board of a final Forest Conservation Plan Revision.
14. If the Applicant seeks to install an exterior sign, it must first obtain a sign permit from the Department of Permitting Services for any proposed sign, and must file a copy of any such sign permit with OZAH and amended plans showing the sign's location and details. The final design of the proposed sign must be in compliance with the Zoning Ordinance restrictions for signs displayed in a residential zone, or the Applicant must first obtain a sign variance from the Sign Review Board.
15. If the Applicant makes any significant changes to the colors of the proposed building, as shown in Exhibits 55(a) and (b), it must request an amendment to the Conditional Use Plans approved in this case

16. The proposed facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.
17. The Applicant and any successors in interest must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 28th day of December, 2018.



Martin L. Grossman
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the

time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTICES TO:

St. Anne's Episcopal Community Development Corporation, Applicant
Jody S. Kline, Esquire
Barbara Jay, Executive Director
Montgomery County Board of Appeals
All parties of record
Charles Frederick, Esquire, Associate County Attorney
Diane Schwartz-Jones, Director, Department of Permitting Services
Ehsan Motazed, Department of Permitting Services
Greg Nichols, Manager, SPES at DPS
Gwen Wright, Director, Planning Department
Phillip Estes, Planning Department
Alexandre Espinosa, Director, Finance Department
Washington Suburban Sanitary Commission
Montgomery County Public Schools
Abutting and Confronting Property Owners
(or a condominium's council of unit owners or renters, if applicable)
Civic, Renters' and Homeowners' Associations within a half mile of the site
Any Municipality within a half mile of the site